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COMMON PLEAS COURT

2016 MAR 28 PM 1:06

IN THE COURT OF COMMON PLEAS OF ALLEN COUNTY, OHIO

JESSIE BURRITT MILLER  
CLERK OF COURTS  
ALLEN COUNTY, OHIO

STATE OF OHIO

\*

CASE NO. CR2014 0139

Plaintiff

\*

-VS-

\*

**TRANSCRIPT -  
JURY TRIAL**

**MARKELUS Q. CARTER**

\*

Defendant

\*

SEPTEMBER 8 - 22, 2015

**A P P E A R A N C E S**

The HONORABLE JEFFREY L. REED, Judge of the Court of Common Pleas  
of Allen County, Ohio, presiding;

TERRI L. KOHLRIESER and ANTHONY J. MILLER, Assistant Prosecuting  
Attorneys, Allen County, Ohio, present on behalf of the State of Ohio;

JON PAUL RION, Attorney at Law, Suite 2150, 130 West Second Street,  
P.O. Box 10126, Dayton, Ohio 45402, present on behalf of the defendant;

SUSAN K. THOMAS  
Court Reporter  
Court of Common Pleas  
Allen County Justice Center  
P.O. Box 1243  
Lima, Ohio  
45802

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**NOTE:** THE FOLLOWING IS A LIST OF EXHIBITS OFFERED BY THE PARTIES AND RULED UPON BY THE COURT FOR ADMISSION INTO EVIDENCE. SAID EXHIBITS HAVE BEEN FILED WITH THE ALLEN COUNTY CLERK OF COURT'S OFFICE FOR TRANSFER TO THE THIRD DISTRICT COURT OF APPEALS. HOWEVER, ANY EXHIBIT NOTED WITH AN ASTERISK (\*) WAS NOT FILED WITH THE TRANSCRIPT AND SAID EXHIBITS ARE HELD AT THE ALLEN COUNTY COMMON PLEAS COURT AND ARE AVAILABLE UPON REQUEST.

**STATE OF OHIO'S EXHIBITS -**

- 1 - PHOTOGRAPH OF VICTIM, KENNETH WARRINGTON;
- 2 - E-MAIL FROM PAM CALLAHAN DATED 1-12-09;
- 3 - PHOTOGRAPH OF HOUSE AT 436 MCKIBBEN STREET;
- 4 - PHOTOGRAPH OF HOUSE AT 436 MCKIBBEN STREET;
- 5 - PHOTOGRAPH OF REAR OF HOUSE AT 436 MCKIBBEN STREET AND CAR AND PICK-UP TRUCK;
- 6 - PHOTOGRAPH OF VICTIM'S PICK-UP TRUCK;
- 7 - PHOTOGRAPH OF AEP BILL;
- 8-A - ALL CALLS FROM DECEMBER, 2007 STAND-OFF, INCLUDING DISCONNECTS AND HANG-UPS;
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173 - DVD OF HOLDING ROOM INCIDENT;

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180 - PHOTOGRAPH OF STEPHEN UPHAM - SCRATCH TO BACK OF  
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**DEFENDANT'S EXHIBITS -**

A - 2007 E-MAILS BETWEEN SONYA HUGHES AND KENNETH  
WARRINGTON;

B - PHOTOGRAPH OF LICENSE PLATE - #1 ASSHOLE;

C - PHOTOGRAPH OF SHED AND DEFENDANT'S TRUCK AT 436  
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- D - PHOTOGRAPH OF REAR OF HOUSE AT 436 MCKIBBEN STREET AND REAR OF VICTIM'S TRUCK;
- E - PHOTOGRAPH OF REAR OF HOUSE AT 436 MCKIBBEN STREET, SHED, AND SIDE/REAR OF VICTIM'S TRUCK;
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- N - DRAWING OF HOUSE AND SHED AT 436 MCKIBBEN STREET;
- O - PHOTOGRAPH OF OPENED GUN CASE AT 122 EUREKA STREET;
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- R - PHOTOGRAPH OF BEDROOM AT 122 EUREKA STREET;
- S - PHOTOGRAPH OF BEDROOM WITH CAMOUFLAGE CLOTHING AT 122 EUREKA STREET;
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V - PHOTOGRAPH OF .357 FIREARM;

W - PHOTOGRAPH OF CAMOUFLAGE PANTS - **(NOT ADMITTED BY COURT)**;

X - PHOTOGRAPH OF BASEMENT AT 122 EUREKA STREET;

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Z - LIMA POLICE DEPARTMENT PROPERTY LOGS;

AA - INDICTMENT AND JUDGMENT ENTRY OF SENTENCING IN STATE OF OHIO -VS- JOSEPH A. MOORE, CASE NO. CR2012 0367;

BB - JUDGMENT ENTRY FINDING VIOLATION OF COMMUNITY CONTROLS IN STATE OF OHIO -VS- JOSEPH A. MOORE, CASE NO. CR2012 0367;

CC - INDICTMENT IN CR2009 0069, STATE OF OHIO -VS- JOSEPH A. MOORE;

DD - JUDGMENT ENTRY ON SENTENCING IN STATE OF OHIO -VS- JOSEPH A. MOORE, CASE NO. CR2009 0060;

EE - B.C.I. REPORT FROM DANIEL DAVISON REGARDING G.S.R. FROM DEFENDANT'S HANDS/FACE;

FF - B.C.I. REPORT FROM TODD WHARTON **(WITHDRAWN BY THE DEFENSE)**;

II - JUDGMENT ENTRY ON SENTENCING FOR STATE OF OHIO -VS- STEPHEN UPHAM, LUCAS CO. CASE NO. G-4801-CR-0201101176-000;

JJ - LETTER TO LIMA POLICE DEPARTMENT;

KK - COPY OF ALLSTATE INSURANCE CARDS/PROOFS;

LL - B.C.I. REPORT FROM VICKIE BARTHOLOMEW REGARDING  
FINGERPRINT COMPARISONS AND CURRICULUM VITAE FOR  
VICKIE BARTHOLOMEW;

**COURT'S EXHIBITS -**

- 1 - A.C.S.O. OFFENSE REPORTS REGARDING DEFENDANT AND  
STEPHEN UPHAM;
- 2 - DVD OF HOLDING ROOM CELL INCIDENT (SECOND VIEW)  
BETWEEN DEFENDANT AND STEPHEN UPHAM;
- 3 - NOTE FROM JURY TO THE COURT;
- 4 - COURT'S ORDER TO SUPPLEMENT RECORD WITH ATTACHED  
A.C.S.O. OFFENSE REPORTS;

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1 THE COURT: We're reconvening after the  
2 noon recess on the 17th of September, 2015 in Case Number CR2014 0139,  
3 State of Ohio -vs- Markelus Q. Carter. The defendant is present in Court with  
4 his attorney. The State is present through the prosecuting attorney's office.  
5 The jurors are waiting, but they are not in the Courtroom.

6 The first matter of business - when we recessed an issue was put on  
7 the record regarding the State's intent to call Deputy Enyart as a witness.  
8 The Deputy is a security officer for the Court. He was present during the  
9 testimony of Mr. Upham. So, that was the issue there. But, I understand  
10 from representations outside of the Courtroom over the lunch hour that that is  
11 now a moot issue. Is that a fair assessment?

12 MRS. KOHLRIESER: Yes, your Honor. In  
13 light of everything the State would withdraw its intention to, or, I guess, its  
14 Motion to be able to call Mr. Enyart. However, we would like to call a different  
15 C.O. in this matter who has not been present during the trial, but was part of  
16 the delivery of Mr. Upham and subsequent break-up of the altercation  
17 between the defendant and Mr. Upham.

18 THE COURT: Okay. That is C.O. Shaffer,  
19 as I understand it?

20 MRS. KOHLRIESER: Yes.

21 THE COURT: And I understand along with  
22 that the State had noticed Mr. Rion that along with Mr. Shaffer's testimony  
23 was additional video footage from the hallway outside of the holding room?

1 MRS. KOHLRIESER: Yes, your Honor.

2 It's from the hallway outside. I know it was mentioned in chambers, but that  
3 was part of the disc that we gave to Mr. Rion this morning. But, again, with  
4 the computer technology and things of that nature I don't believe Mr. Rion  
5 realized he had two views on there. But, all along I knew it. I did mention to  
6 Mr. Rion when he was going to show it to his client this morning that there's  
7 multiple views. Whether he heard me, he was going into the holding area at  
8 the time, but I did say, 'there's multiple views on there'. Anyhow, this video  
9 would go -- you can barely see any of the altercation. If you look at the  
10 screen now, your Honor, you can see the door to the holding cell and you get  
11 a little bit of the view of the altercation from there. But, it's really to show,  
12 basically, and I would fast-forward through the fifteen minutes of Upham just  
13 waiting there, but of him entering the cell and then when the defendant is  
14 brought into the cell. More particularly, it's about the timing, your Honor,  
15 about when Deputy Enyart, well, you can see him locking the door and you  
16 can see the shadow of him going out the other door. That's when the  
17 altercation starts. So, again, it's going to the testimony of Mr. Upham  
18 regarding how it all started and things of that nature and also when it ended.  
19 You can see the guards coming in. Again, to Mr. Upham's version of events,  
20 they were coming and they were fiddling at the door, so to speak, and you  
21 can see that on here. I do understand that Mr. Rion has some concerns  
22 because on this video you can clearly see the defendant in handcuffs and Mr.  
23 Enyart taking those handcuffs off of him and leaving him in that cell. But, I

1 think it's of probative value, again, when the defense basically is that Stephen  
2 Upham is a liar and he lies about everything he says, basically. I think the  
3 State, you know, is entitled to show corroborating details of various aspects of  
4 his testimony.

5 THE COURT: Okay. Mr. Rion?

6 MR. RION: I mean, if that's their purpose,  
7 use of extrinsic evidence to corroborate a witness, well, I'm not sure if that's  
8 allowable. Number two, we're gilding a lily here. Number three, I think the  
9 issue as to what happened has been fairly given to the jury. I think at some  
10 point it does become prejudicial when you're showing people being locked up  
11 and unlocked. I don't think it adds anything to what we already have. It only  
12 detracts. There's only a prejudicial value. I don't see the probative value of it.  
13 There's no -- nobody is disputing the timing. All the issues the prosecutor  
14 raised are not in dispute. They weren't raised during cross examination.  
15 They won't be raised in closing somehow. There's more to this video than  
16 what was said. I mean, I think the video encapsulates the entire situation.  
17 So, it is prejudicial at this point. It seems like it's putting the entire trial as to  
18 this issue as opposed to the Murder, which is the one thing the Court doesn't  
19 want to have happen.

20 MRS. KOHLRIESER: Your Honor, I guess  
21 the only thing in the alternative I would ask is that if the Court decides that we  
22 shouldn't be allowed to do it now, should the defendant take the stand and  
23 give some other variation, well, I guess I would ask that be able to re-visit

1 the issue for rebuttal purposes.

2 MR. RION: No objection.

3 THE COURT: Yea, that would be a whole  
4 other issue that would change the context of this whole argument if it was  
5 used as rebuttal for any witness that the defense might call if they were  
6 inconsistent.

7 The Court, again, just for the record, I was in the hallway looking in the  
8 open door when you were showing it and so I've seen it to that extent. Mr.  
9 Rion, have you seen it?

10 MR. RION: I have, and I'll tell the Court,  
11 and this is sort of another argument, but there's two files on the computer. I  
12 thought I had opened both files, but somewhere within the second file was  
13 this view. So, that's for another -- well, I was told there was two different  
14 angles and I looked and I saw two different views from the computer from  
15 what happened on the inside. Those were the two things we reviewed before  
16 Upham's testimony. So, I've viewed this now. Again, it's yes, to answer your  
17 question. But, I didn't have this -- I didn't know that I had this at the time I  
18 was cross examining Upham.

19 THE COURT: All right. The Court is going  
20 to find that the evidence may be relevant, but I'm going to order that it be  
21 excluded as unfairly prejudicial at this stage of the game. Again, it's subject  
22 to being allowed in rebuttal. But, I'm also, along with that ruling, since I'm  
23 ruling that the video not be played that there won't be argument from either



1 side as to any fact that's not present on the exhibit that was played. State's  
2 '173', if that's admitted into evidence, you can argue about that. But, you  
3 can't argue things that weren't on '173', or, visible on '173'. I'm just arguing  
4 that the video itself, I don't know, -- and I'm not going to limit the State if they  
5 still want to call another corrections officer to give testimony. But, since the  
6 video doesn't really demonstrate the altercation that I allowed in as  
7 consciousness of guilt, it will be ordered excluded.

8 MRS. KOHLRIESER: Your Honor, if I may  
9 have just one moment to let C.O. Shaffer go? He was really simply to  
10 authenticate.

11 THE COURT: Okay. All right. Yea, you  
12 can let him go. Then who would the State's next witness be?

13 MRS. KOHLRIESER: Detective Scott  
14 Leland, your Honor.

15 THE COURT: All right. Well, why don't  
16 somebody find him and we can bring the jurors in.

17 MRS. KOHLRIESER: Oh, yea. We might  
18 want to get the jury first.

19 MR. MILLER: Do you want me to get Scott  
20 now?

21 THE COURT: Yea, if he's your next  
22 witness. Bring the jurors in.

23 (WHEREUPON, jury was brought into the Courtroom.)

1 THE COURT: We're already on the record  
2 in CR2014 0139. The jurors have been returned to the Courtroom. The State  
3 may call their next witness.

4 MRS. KOHLRIESER: Yes, your Honor.  
5 Thank you. The State would call Detective Scott Leland.

6 THE COURT: All righty.

7 WHEREUPON, called to appear as a witness in this proceeding was one:

8 **DETECTIVE SCOTT LELAND**

9 who, having been duly sworn by the bailiff herein, testified as follows:

10 BAILIFF: He has no objection.

11 THE COURT: All right. Thank you.

12 **DIRECT EXAMINATION**

13 **BY MRS. KOHLRIESER:**

14 Q Good afternoon. Can you state your name for the record, please?

15 A My name is Scott E. Leland.

16 Q And where are you currently employed?

17 A I'm a detective with the Lima Police Department.

18 Q How long have you been with the Lima Police Department?

19 A About twenty-two years.

20 Q How long have you been a detective?

21 A Fifteen years now.

22 Q And what is your current department that you're working in?

23 A I work in the Northwest Ohio Technologies Crime Unit as a computer

1 forensic investigator.

2 Q Okay. What is the Northwest Ohio Technologies Crime Unit?

3 A It is a cyber forensics lab. We do computer forensics and mobile  
4 digital forensics on cell phones, videos, computers, and things like that.

5 Q Cameras?

6 A Cameras.

7 Q And what are your specific duties within that?

8 A I'm a forensics examiner, as well as I administrate the function of the  
9 lab.

10 Q And who else is in that unit with you currently?

11 A Sergeant Terry Sneary from the Allen County Sheriff's Department, as  
12 well as I think five maybe part-time examiners that come in occasionally.

13 Q Okay. Now, when you say Northwest Ohio do you cover multiple  
14 jurisdictions?

15 A Yes, we do.

16 Q Could you give a few that you cover?

17 A We cover most of the jurisdictions in Allen County, as well as the City  
18 of Lima, and Hardin County, Van Wert County, Mercer County and Auglaize  
19 County.

20 Q Okay. Do you also serve in an overflow capacity for the local F.B.I.  
21 office if necessary?

22 A Yes. We do work, or, we have done work for the F.B.I., as well as the  
23 United States Secret Service, and Immigrations and Customs, I.C.E., as they

1 call it. We've done work for I.C.E. as well as federal task forces like I.C.A.C.  
2 and things like that.

3 Q And I.C.A.C. stands for?

4 A The Internet Crimes Against Children Task Force.

5 Q Okay. Did you receive any specialized training and/or education to  
6 perform your current position?

7 A Yes, ma'am. I have countless hours of training in the field of  
8 computers and digital forensics.

9 Q Such as?

10 A I'm certified as a basic intermediate and advanced computer forensic  
11 examiner from both the Ohio State Peace Officers Training Academy as well  
12 as the National White Collar Crime Institute. I am certified as a mobile  
13 forensic examiner in both basic and advanced through the United States  
14 Secret Services National Computer Forensic Institute. I'm certified by several  
15 manufacturers of software that we use - Access Data Certified Examiner,  
16 Encase, and things like that. I'm certified in Ocean Systems forensic tools as  
17 far as digital videos and graphics.

18 Q Okay. I'll stop you there. The list goes on?

19 A Yes.

20 Q Okay. Did you also receive any in-house training, and by that I mean  
21 through the Lima Police Department?

22 A When I first -- well, training for us, continuing education, is always daily  
23 and weekly. If we're not busy doing something we're training. I received -- I

1 was fortunate to work under a guy named Kevin DeLong. I believe he  
2 testified in here earlier. He was in our lab for several years and he's a trainer.  
3 I had the good grace to train under him for several years in-house in our lab.

4 Q Okay. How many computer examinations would you say you've  
5 performed over the years?

6 A Hundreds upon hundreds of digital examinations on everything from  
7 computers, to phones, to cameras, to thumb drives, to flash drives, DVR's,  
8 and things like that. Hundreds upon hundreds. I know last year alone my lab,  
9 between the two of us, conducted five hundred and three examinations.

10 Q Okay. You mentioned certifications. What sorts of things do you have  
11 to do in order to be certified in that field?

12 A Not only do you have to attend training from a certified training course,  
13 but you have to complete both practical and written examinations to get  
14 certifications.

15 Q Okay. And have you testified in Court before in your capacity as a  
16 forensic computer mobile data analyst?

17 A Yes, I have, both in Auglaize County and Allen County Courts.

18 Q All right. And have you been qualified as an expert in those two  
19 Courts?

20 A Yes, I have, in both.

21 MRS. KOHLRIESER: Your Honor, at this  
22 time I would move to have the witness qualified as an expert in forensic  
23 computer and mobile data technology analysis.

1 THE COURT: Do you wish to be heard,  
2 Mr. Rion?

3 MR. RION: No objection.

4 THE COURT: Okay. The Court will note  
5 that he is an expert qualified to testify in whatever you said.

6 MRS. KOHLRIESER: Thank you, your  
7 Honor.

8 Q Okay. Let's get to really the meat of what we're here for now. In  
9 February of 2009 were you -- your title is still Detective; correct?

10 A Yes, it is. I am still a Detective.

11 Q In 2009 were you active in the detective division?

12 A Yes, I was.

13 Q And was your primary role at that time detective work versus the  
14 computer work?

15 A Correct. My primary duties at that time were criminal investigations.

16 Q Okay. And specifically on March 23rd of 2009 did you become aware  
17 of a homicide over on East McKibben?

18 A Yes, I did.

19 Q And as part of that were you asked to seek a search warrant for a  
20 home at 122 East Eureka belonging to Markelus Carter?

21 A Yes, I was.

22 Q And did you, in fact, get that search warrant?

23 A Yes.

1 Q I understand there was more than one search warrant obtained that  
2 day?

3 A Yes, ma'am.

4 Q Okay. Let's talk about the first search warrant. What was the first  
5 search warrant, what were you allowed to look for in that first search warrant?

6 A Weapons, or firearms, and ammunition was the extent of the first  
7 search warrant we executed.

8 Q Now, we've heard a little bit about search warrants and how you go  
9 about getting them. Were you the one who did an affidavit giving the facts to  
10 the Court as to why a search warrant should be issued?

11 A Yes, ma'am, that was me.

12 Q And what was the basis for that first warrant?

13 A For the first search warrant we had detectives that were talking to the  
14 defendant in an interview room and during the course of that interview the  
15 defendant told our investigators that he had a gun, or guns, plural, in his  
16 home and that there was ammunition for the guns. Because we're detectives  
17 and we do our homework we knew that the defendant was under what we call  
18 disability. That means by law he wasn't permitted to have a firearm. So,  
19 knowing that there was a firearm in the residence we asked for permission to  
20 go in and get it and he said --

21 Q Now, Detective?

22 A Yes.

23 Q Did you get a search warrant for that?

1 A Yes, we did.

2 Q Okay. Thank you. Now, were you part of the team that went to  
3 execute that first search warrant?

4 A Yes, ma'am.

5 Q Tell us a little bit about that.

6 A Several of us, a group of people, we always work in a team. You  
7 know, houses are too big for one or two guys to search. So, we take a team  
8 of people in. We enter the house and the first thing we always do is make  
9 sure there's no one else in the house, or animals in the house that are going  
10 to hurt anybody coming in. We call it clearing and securing. Once we've  
11 cleared and secured a residence then we begin searching for the things that  
12 are permitted for us to search for within the body of the search warrant.

13 Q Okay. Let me ask you this. Are you familiar with the term protective  
14 sweep?

15 A Yes.

16 Q Is that also the -- well, what were the terms you used?

17 A Yea, that's what I was just kind of describing is a protective sweep. It's  
18 a matter of semantics. We call it both things.

19 Q Okay. All right. So, a protective sweep is what you did?

20 A Yes.

21 Q Okay. You said you began, you and the others, began searching for  
22 the weapons and ammunition that you were allowed to search for at that  
23 point?



1 A Yes.

2 Q Okay. Were there any weapons found during that search?

3 A Yes, ma'am.

4 Q Did you find one?

5 A Yes.

6 Q Do you recall what you found?

7 A I found a Smith & Wesson, model 686, if memory serves me. It's an  
8 L-frame revolver. It was a .357 magnum.

9 Q Okay. Did you touch it?

10 A I can't say specifically if I touched it. I probably did to hold it up so  
11 Kenny, or, our I.D. officer could photograph it and things like that.

12 Q Okay. Would you have worn gloves when you were touching that?

13 A Absolutely. I always wear gloves, as a rule, on any search warrant.  
14 You just never know what you're going to get into and you don't want to  
15 disturb any evidence or anything.

16 Q Okay. When you say Kenny, you're referring to I.D. Officer Kenny  
17 Whitney?

18 A Yes.

19 Q Now, did there come a time during that search where the decision was  
20 made to seek a second search warrant?

21 A Yes, there was.

22 Q Okay. And who was responsible for obtaining that second search  
23 warrant?

1 A That would have been me also.

2 Q And what was the basis for that second search warrant?

3 A Well, the basis grew a little bit.

4 MR. RION: Your Honor, may we  
5 approach?

6 THE COURT: Sure.

7 (WHEREUPON, Court and counsel had a brief discussion at the Bench, on  
8 the record, as follows.)

9 MR. RION: I don't know where he's going  
10 with this, but there's a lot of basis' for it and I'm not objecting to it but, for  
11 instance, they found like cocaine and things like that. Now, I don't know if  
12 he's going to go there and --

13 MRS. KOHLRIESER: That's not in the  
14 second search warrant; is it?

15 MR. RION: I think that was the basis and  
16 that's why --

17 MRS. KOHLRIESER: Okay. I'll rephrase  
18 my question. Yea.

19 MR. RION: It's legitimate. I mean, I'm not  
20 challenging the search warrant.

21 MRS. KOHLRIESER: No, no. That's fine.

22 (WHEREUPON, Court continued on the record, as follows.)

23 THE COURT: Okay. Proceed.

1 MRS. KOHLRIESER: Your Honor, can I  
2 have just a moment to check something out?

3 THE COURT: Sure.

4 (WHEREUPON, Court went off the record briefly.)

5 Q Do you know whether during that first search whether any of the  
6 officers in the home also found a nine millimeter weapon?

7 A Yes.

8 Q And at that time are you aware of whether, well, maybe not yourself  
9 but other officers there on scene had been at the murder scene and found  
10 nine millimeter casings?

11 A Yes, I was aware of that.

12 Q And was that nine millimeter gun part of the basis for the second  
13 search warrant?

14 A Yes.

15 Q Did you also outline the relationship, as part of the basis for your  
16 second search warrant, between Sonya Burkholder, the victim, and the  
17 defendant, Markelus Carter?

18 A Yes, I did.

19 Q Do you recall, again, as part of that second search warrant, nine  
20 millimeter ammunition being found?

21 A Yes.

22 Q And as part of that second search warrant basis by then had  
23 information been received from Husky Refinery about some calls that the

1 defendant might have made seeking information as to the victim and Sonya  
2 Burkholder?

3 A Yes.

4 Q I guess, what was the purpose of -- well, in those parameters, what  
5 was the purpose of getting the second search warrant then? What were you  
6 seeking to look for then?

7 A At that particular time we began to believe that there would have been  
8 evidence of involvement in the homicide that we were currently investigating  
9 in the residence.

10 Q Okay. So, now we've advanced from simply looking for weapons for  
11 someone who's not allowed to have them to possible evidence of a murder?

12 A Yes, ma'am.

13 Q Okay. And did that allow you to more extensively search the home?

14 A Yes.

15 Q And are you aware of whether a number of items were seized during  
16 this second search of the home?

17 A Yes, a number of items were seized.

18 Q And are you aware of whether Investigator DeLong seized a number of  
19 computer and mobile data and camera and that type of stuff as well?

20 A Yes, ma'am. There were computers and things like that, cameras, and  
21 flash drives seized during the second search warrant.

22 Q Now, do you, yourself, during the execution of the first search warrant  
23 recall seeing any camouflage clothing?

1 A I cannot say. I do not recall off the top of my head.

2 Q Okay. During the first search warrant was that even on your radar to  
3 look for?

4 A No. We were looking for firearms and ammunition.

5 Q And what was the state of that house?

6 A It was a mess. Clothing and things, belongings, piled up upon each  
7 other.

8 Q Okay. And then at some point did your duties shift more to the forensic  
9 examination of the computers and things like that?

10 A Yes.

11 MRS. KOHLRIESER: Can I have just a  
12 moment, your Honor?

13 THE COURT: Sure.

14 (WHEREUPON, Court went off the record briefly.)

15 Q All right. Detective Leland, sometime last year, 2014, were you in the  
16 Northwest Ohio Technology Crimes Unit actively?

17 A Yes. Yes, I was.

18 Q And were you asked to conduct a forensic examination yourself of  
19 various computers that were found?

20 A Yes, I was.

21 Q And did you, in fact, do that?

22 A Yes, I did.

23 Q Do you recall the purpose of that request?

1 A Investigator DeLong had done the examination originally and he had  
2 since moved on to the private sector and was no longer in the area. The  
3 detective, I believe, asked me if I could restart those investigations and see if  
4 I could find anything.

5 Q Had he done the examination of these things several years before?

6 A Yes, he had.

7 Q Okay. And were you aware of things that he had found?

8 A Yes, I was.

9 Q And did you similarly find --

10 A Yes, I did.

11 Q -- these types of things? Okay. Now, I want to specifically talk about  
12 the camera just a little bit. I'm going to hand you what's been previously  
13 marked as State's exhibit '141'. If you would take a look at that for me,  
14 please?

15 A Okay.

16 Q Okay? Do you recognize what that is?

17 A Yea. This is a Sony DSCT9 digital camera.

18 Q Okay. Was that recovered from 122 East Eureka?

19 A Yes, it was.

20 Q And has that been held in evidence, well, I don't know in the right  
21 building, but with the Lima Police Department throughout these six years?

22 A Yes, it has.

23 Q And did you have occasion to examine that camera?

1 A Yes, I did.

2 Q Okay. I'm going to hand you collectively State's exhibits '142', '143',  
3 '144', and '6'. I'd ask you to take a look at those, please.

4 A Okay.

5 Q Do you recognize those documents?

6 A Yes, I do.

7 Q What are they?

8 A These are printed versions of digital pictures I found on the camera.

9 Q Okay. Were you able to determine times on those?

10 A Yes.

11 Q Now, I'm going to take you through one by one here in a second and  
12 ask you about those specific times; okay?

13 A Yes.

14 Q Just give me one second. Were you able also to go into that camera,  
15 let me just ask you that, able to go into that camera and determine the times  
16 on these pictures?

17 A Yes, I was.

18 Q Do you recall the times of those pictures yourself off the top of your  
19 head?

20 A Not off the top of my head. I think they started at about eight fifty-five  
21 P.M.

22 Q Okay. If I were to show you part of your report would that refresh your  
23 recollection as to the time those photos were taken?

1 A Yes, it would.

2 Q First off, do you see a date stamp on those pictures?

3 A Yes, there's a date stamp on each picture. This one is Jan., January  
4 9th, 2009.

5 Q And were you able to ascertain whether the camera was giving the  
6 correct date?

7 A Yes.

8 Q I'm going to show you your report and I'd ask you to take a look at that  
9 for a second. I'm sorry. Hold on just a second.

10 MR. RION: I've seen it. Thank you.

11 Q I'd ask you to take a look at that. Tell me when you're done.

12 (WHEREUPON, witness reviewed report.)

13 A Okay.

14 Q Does that refresh your recollection as to the time of each of these?

15 A Yes.

16 Q Okay. Let's take them one by one. State's exhibit '142'. I know this  
17 isn't the best mechanism for looking at it. But, what do we see pictured in  
18 State's exhibit '142'?

19 A This is an image taken from in the roadway on Elm Street, pointing  
20 eastbound, just before the underpass which would be just east of Central.

21 Q Well, let me ask you this, Detective - how in the world can you tell that  
22 from this picture?

23 A I've been a police officer in Lima for twenty-two years. I mean, I've



1 driven these streets hundreds and hundreds and hundreds of times. While  
2 this is not a very good representation of what you can see on a computer, it  
3 was very clear to see that that underpass bridge, and it's a very unique  
4 bridge, is what's in the picture, especially on the left here.

5 Q Okay. On January 9th, 2009 when did this picture -- when did your  
6 examination reveal this picture was taken?

7 A At eight fifty-five P.M.

8 Q And then there's another picture, State's exhibit '143'?

9 A Yes.

10 Q Now, this one is even fuzzier. Again, are you able to tell where that is  
11 at this time?

12 A No, I could not say with any certainty where that picture was taken.

13 Q What time was this picture taken?

14 A It was taken less than a minute later at eight fifty-six.

15 Q Okay. State's exhibit '144'. Do you recognize what's depicted in this  
16 photograph?

17 A Yes, I do. This is a photograph taken from the roadway on Jackson  
18 Street, pointing northbound at North Street.

19 Q Okay. So, do you know approximately how far that is to the area of the  
20 400 block of East Pearl and East McKibben?

21 A Very, very, very close. Less than a quarter mile, probably.

22 Q And that picture was taken at what time?

23 A That image was taken at eight fifty-seven P.M. So, a minute later.

1 Q Okay. And then, lastly, State's exhibit '6' here. I'd ask you to take a  
2 look at that. What time was this picture taken?

3 A This image was taken at nine P.M., three minutes after the last one.

4 Q Okay. Now, did you also find a video snippet on that phone?

5 A Yes, I did.

6 Q Excuse me. On that camera?

7 A Yes, I did.

8 Q And do you recall approximately how much longer after State's exhibit  
9 '6' at nine o'clock that video started?

10 A Within a few minutes of the last picture that we just saw on the screen  
11 a video was on the camera. It was thirteen seconds long. It appeared to be  
12 on Market Street at Union, pointing westbound toward where the Police  
13 Department is located.

14 Q Okay. Is it reflected that nine oh seven would have been that video?

15 A That video is not on here, I don't believe.

16 Q Okay. Sorry. Do you know whether nine oh seven was the time?

17 A Yea, I believe nine oh seven was the time. Yes, ma'am.

18 Q All right. You said it's just a thirteen second video?

19 A Yes.

20 Q Okay. What does it appear to show?

21 A It appears to be taken from the inside of a motor vehicle through the  
22 front windshield of the intersections of Market Street and Union area in front  
23 of the Health Department and Lima Police Department area.

1 Q Okay. I want to show something just so we're clear on this. I know  
2 you said you're a Lima Police Officer and you can see, and I'm just going to  
3 ask you to hold, because it doesn't show as well, but State's exhibit '142'  
4 please.

5 A Uh-huh.

6 Q Feel free to stand up.

7 MRS. KOHLRIESER: Actually, with the  
8 Court's indulgence, if he could step out here, perhaps?

9 THE COURT: That's fine.

10 MRS. KOHLRIESER: The screen just  
11 doesn't show it very well.

12 THE COURT: Just so if he speaks he's  
13 close to a mic.

14 A I'll speak up, sir.

15 Q I'm going to actually have you kind of stand at this podium and hold  
16 that picture up there. Show them the things in this picture that indicate to you  
17 where that is.

18 A When you're looking at this picture, ladies and gentlemen, you'll see  
19 right across the top that it's a bridge. There's an overpass here. If you look  
20 on what would be your left of this picture there is concrete walls and in those  
21 concrete walls there's arches. Okay? The only overpass we have in Lima  
22 going down like that is the Elm Street railroad underpass just east of Central  
23 Avenue.

1 Q Okay. Thank you.

2 A Yes.

3 Q Now, let's talk a little bit about what you did on the computers. I know  
4 that you said that you looked at and were able to confirm some of what  
5 Investigator Long, or, DeLong had found. What kinds of things did you find?

6 A I found the same things that Investigator DeLong found.

7 Q Such as?

8 A Searches for Husky Refinery and things like that, property searches I  
9 think for the McKibben Street address somewhere on the computers. Again,  
10 the images on the camera. Those are all things that we found. I also located  
11 what we call on the computers a SAM file, and that's a capital S, a capital A,  
12 and a capital M. A SAM file is a file that shows, well, how do I put this in  
13 language, when you first buy a computer and you first turn it on you have to  
14 enter, you know, whose computer is this and you have to enter your name  
15 and then they say, you know, what company, and if you have a company you  
16 can enter a name. Well, that data that you enter originally when you start that  
17 software for the first time is put into what's called the SAM file. In this  
18 computer I found the SAM files and the user name, I think, was Markelus and  
19 the owner was Markelus Carter in the SAM files.

20 Q Okay. Did you find any photographs of -- well, first let me ask you, do  
21 you remember what Markelus Carter looks like?

22 A Yes.

23 Q Okay. Do you see him in Court today?

1 A Yes. He's the gentleman at the defendant's table.

2 MRS. KOHLRIESER: Please let the  
3 record reflect the witness has identified the defendant.

4 THE COURT: Which gentleman?

5 A In the gray sweater.

6 THE COURT: Okay. So noted.

7 MRS. KOHLRIESER: Sorry.

8 Q Did you find pictures of the defendant on that computer?

9 A Yes, I did.

10 Q Okay. And did you find some where he was dressed in camouflage?

11 A Yes.

12 Q And I'm going to show you State's exhibits '147' and '148'. I'll have  
13 you take a look at these for me.

14 (WHEREUPON, witness reviewed exhibits.)

15 A Yes.

16 Q Do you recognize State's exhibits '147' and '148'?

17 A Yes, I do.

18 Q Okay. Let's start with '147'.

19 A Okay.

20 Q I'm going to put it up on the screen so the jurors can see. I would ask  
21 you, if you will, to kind of tell us what it is exactly we're looking at here.

22 A What you're looking at here, ladies and gentlemen, is a copy out of a  
23 report that is generated by some of the software that we use when we do our

1 forensic investigations. In this particular case you'll see line one says  
2 bookmark. Bookmark simply means that I checked that image and put a  
3 mark by it in the software. I bookmarked it like you would bookmark a book  
4 you were reading so I would know where it was at. It goes on to tell you I  
5 created it. That's my name. I only have one file in that bookmark. It has a  
6 thumbnail accompanying it. The image name is img293.jpg. Computers give  
7 names to all the files you create, a picture, or a word document. Computers  
8 give it a name if you don't give it a name. So, in this case the computer gave  
9 it the name img293. It tells me the size of it and when the file was created on  
10 the computer, --

11 Q And what's that date?

12 A -- as well as modified or the last time it was accessed.

13 Q I'm sorry, Detective Leland. Can I interrupt you a moment?

14 A Yes.

15 Q What's the creation date?

16 A The creation date means the time the file appeared or was placed on  
17 to the computer.

18 Q Okay.

19 A So, for example, if you were to take a picture with your camera and  
20 you were to take that data and transfer it to your computer that image is then  
21 created on your computer on that date. You may have taken the picture with  
22 the camera two weeks earlier. But, that file is not created on the computer  
23 until you put it in the computer. That's what the created date of that file is.

1 Q Let me ask you this - I apologize, but I don't think I did - what  
2 computers do you recall specifically examining?

3 A I examined a Hewlett-Packard laptop, we call them HP's, as well as a  
4 Dell laptop.

5 Q Okay. Is there any information that we see on State's exhibit '147' that  
6 let's you know where this image came from?

7 A Yes. Down at the bottom there it says 'path'. It's the HP laptop. HDD  
8 means its hard drive. So, this information came from the hard drive.  
9 Everything you see basically is what we entered, or, I entered when I started  
10 the case. HP laptop, HD Warrington homicide. E01 is the name of the file  
11 that is created by our imaging software. It's basically, well, we don't work on  
12 your computer. If we have your computer we take an image of your hard  
13 drive and we work off of that image. That way, no matter what we do, we  
14 never change the original evidence. Investigator DeLong worked this case  
15 back in 2006. I was able to work the identical evidence in 2014 - or, 2009 -  
16 I'm sorry. I was able to work it again in 2014 and it was the identical  
17 evidence.

18 Q Okay. So, now we see the image there. What's that commonly  
19 referred to, that small image?

20 A That little one is called a thumbnail.

21 Q Are you able to blow up that thumbnail and see what it actually is?

22 A Yes.

23 Q And is that what we have in State's exhibit '148'?

1 A Yes.

2 Q What do you see -- who do you see depicted in State's exhibit '148'?

3 A The defendant, Markelus Carter.

4 Q And can you tell what object he's wearing?

5 A He has a shirt on, and it looks like a paintball mask on the top of his  
6 head, and he's wearing gloves.

7 Q Detective Leland, on these devices were you able to tell whether there  
8 was anybody using the computer between the hours of three and six A.M. on  
9 February 23rd, 2009; if you recall?

10 A I noted no activity on the computer between those hours.

11 Q Okay. And then did you also provide, I guess, a CD of all your findings  
12 and what you found on the computer to Detective Clark?

13 A Yes, I did.

14 MRS. KOHLRIESER: Could I have just  
15 one second?

16 (WHEREUPON, Court went off the record briefly.)

17 MRS. KOHLRIESER: Sorry. I was  
18 checking my notes real quick, your Honor.

19 Q And aside from the initial searches and things like that did that  
20 basically conclude your part of this investigation?

21 A Yes, it did.

22 Q Let me ask you - you said, and I just want to make sure I'm clear, that  
23 during the searches did you, yourself, ever see any camouflage clothing? Let



1 me ask you this - did you, yourself, ever touch any camouflage clothing?

2 A No.

3 Q Okay. During your participation in the search did you wear gloves?

4 A Yes.

5 Q Thank you.

6 MRS. KOHLRIESER: No further questions  
7 at this time, your Honor.

8 THE COURT: All right. Mr. Rion, any  
9 questions for this witness?

10 MR. RION: Just a few.

11 **CROSS EXAMINATION**

12 **BY MR. RION:**

13 Q Sir, in looking at State's exhibit '148', is this the paintball attire that you  
14 were referring to on direct examination?

15 A Yes, sir.

16 Q These are the images that you found on the computer; correct?

17 A Yes, sir.

18 Q That are relevant to this case?

19 A Yes, sir.

20 Q You were present at the Eureka Street address. What time do you  
21 think you got there?

22 A I would say someplace between eleven-thirty and noon, looking back.

23 Q And how long did the first search take?

1 A I don't know.

2 Q Roughly?

3 A I don't know. I really couldn't tell you.

4 Q How long did the second search take?

5 A I'd say two or three hours.

6 Q And when -- so, you don't know when the first ended and the second  
7 one began?

8 A Right. They pretty much kind of blended together, I would think.

9 Q Well, one was done and then another one started after the first one  
10 was completed; right?

11 A Yes.

12 Q And when you arrived at the residence for the first search who was  
13 initially present with you? If you need to see your report, --

14 A I think Detective Clark was with me. I can't tell you who else was with  
15 me without looking at the report.

16 MR. RION: May I?

17 THE COURT: Sure. Go ahead.

18 Q Does this look like your report, sir?

19 A Yes, it looks like my report.

20 Q So, initially who else was with you?

21 A It was myself, Detective Clark, and Detective Miller at 128 (sic) East  
22 Eureka Street.

23 Q Then you also entered the residence with the assistance of who?

1 A Patrolman Elchert.

2 Q So, those are the people that you wrote down in your report that you  
3 recall, at least at that time?

4 A Yes.

5 Q Does that refresh your recollection? You don't really have an  
6 independent recollection of it?

7 A That's a summary of what happened, in my view, that day.

8 Q So, those --

9 A If I wrote that down, those are the people I remember being there.

10 Q If people came after that -- let me ask it a different way - you obviously  
11 wrote this down and you testified to what you saw.

12 A Yes.

13 Q Or, what you wrote down. That's fine. Is this -- are you relying upon  
14 what you wrote down on this day to inform the jury of who was there initially?

15 A Yes, I am.

16 Q Okay. What I mean by that is without that document you wouldn't be  
17 able to say today who all was present on that day? Fair?

18 A No. Actually I've read that report multiple times in the last, you know,  
19 umpteen days and, to tell you the truth, I just lost it in my mind.

20 Q Right. That's what I mean. Yea. Okay. Thank you very much.

21 THE COURT: Any redirect?

22 MRS. KOHLRIESER: No, your Honor.

23 THE COURT: All right. Detective, thank

1 you for coming in.

2 A Thank you.

3 THE COURT: Next witness for the State of  
4 Ohio?

5 MR. MILLER: Your Honor, can we  
6 approach one second for a quick question?

7 THE COURT: Sure.

8 (WHEREUPON, Court and counsel had a brief discussion at the Bench, on  
9 the record, as follows.)

10 MR. MILLER: Our next witness is Tim. It's  
11 up to the Court whether or not you want to take a break now or signal when  
12 you want to take a break because Tim's going to be, of course, awhile. He'll  
13 probably conclude the afternoon.

14 THE COURT: (Inaudible).

15 MR. MILLER: Okay. If I get carried away  
16 just yell at me or whatever. You don't have to yell at me literally.

17 THE COURT: Okay.

18 (WHEREUPON, Court continued on the record, as follows.)

19 THE COURT: Next witness, please?

20 MR. MILLER: Tim Clark.

21 WHEREUPON, called to appear as a witness in this proceeding was one:

22 **DETECTIVE TIMOTHY CLARK**

23 who, having been duly sworn by the bailiff herein, testified as follows:

1 THE COURT: Do you have an objection to  
2 being photographed?

3 A Oh, no. No.

4 BAILIFF: I didn't think to ask. He's been in here the whole time.

5 A They get the good side of me now.

6 THE COURT: Okay.

7 **DIRECT EXAMINATION**

8 **BY MR. MILLER:**

9 Q All right. Let's get down to it. Well, with all of that, I've got to go back  
10 here and pick up something real quick. Tim, why don't you state your full  
11 name for the record?

12 A It's Timothy Clark.

13 Q And, Tim, where do you work?

14 A I'm a detective with the Lima Police Department.

15 Q Okay. And how long have you been with the Lima Police Department?

16 A In the neighborhood of twenty-nine years.

17 Q Okay. And how long have you been a detective?

18 A I've been a detective since 2002.

19 Q Okay. Before we get into the specifics here, and I think we've covered  
20 this, but I just want to cover it so I know we've covered it for the record, is 436  
21 East McKibben in Allen County, Ohio?

22 A Yes, it is.

23 Q Now, how long have you been a detective again?

1 A Since 2002.

2 Q Okay. All right.

3 A I think that's about thirteen years.

4 Q Yep.

5 A Or twelve years. I'm not very good with math.

6 Q All right. How many homicide investigations have you been a part of  
7 during your career as a detective?

8 A I've been a part of a lot of homicide investigations. I don't know a  
9 number. Twenty? Twenty plus?

10 Q Okay. All of them with the Lima Police Department?

11 A Yes, sir.

12 Q In other words, you haven't worked for another police agency?

13 A I never worked for any other agency.

14 Q Okay. Just so we know, in general terms how does -- well, when a  
15 homicide call comes into the detective bureau, let me put it this way, when the  
16 detective bureau learns of a homicide what happens? Just take us through  
17 the paces.

18 A Well, to take you through it, our detective bureau, our police  
19 department has, and I don't know the exact number back then, but generally  
20 seventy-five officers or so.

21 Q Now, you said back then. We'll focus on this. But, generally?

22 A Generally speaking, our detective bureau has seven detectives and  
23 two patrol officers who work as juvenile investigators. Our office handles well

1 over, our office meaning our detective bureau, handles well over fifteen  
2 hundred felony cases a year. Each detective probably handles over a  
3 hundred and fifty, you know, a hundred to a hundred and fifty cases a year.  
4 Those cases range from anything as simple as a check fraud, or a minor  
5 felony theft if you believe there is such a thing, up to murder and everything  
6 in-between. So, we do, or, we handle, if it's a felony investigation, someone  
7 in our bureau, if it's assigned, will investigate it.

8 Q Okay. So, do you have a specific homicide investigation department or  
9 bureau?

10 A No.

11 Q Okay. So, as you said, and it's my understanding and, again, correct  
12 me if I'm wrong, everything from a, you know, low level felony theft all the way  
13 up to a homicide is handled by the same group of people?

14 A Yes, sir.

15 Q Okay. Okay. Go ahead.

16 A We generally work Monday through Friday eight to four. In the  
17 evenings and on the weekends we have detectives and I.D. officers who are  
18 on call for that time frame, which on the night, or, the night prior to this  
19 incident myself and I think Detective Kleman were the detectives on call. I  
20 went to bed on a Sunday evening and was planning on coming into work at  
21 eight o'clock the next morning, but I was called into work early that morning.  
22 I'm not positive of the exact time. But, it was before eight o'clock and I  
23 believe I arrived on the scene somewhere around six-thirty in the morning.

1 But, that's generally how that works. We get called in after hours for any  
2 number of different reasons.

3 Q Do all the detectives, and you even mentioned the juvenile bureau, do  
4 you have a separate juvenile investigating, well, I don't want to call it a  
5 department, but a separate group of people that do that?

6 A They work with us. By rank they're patrol officers who have been  
7 assigned as investigators to work and handle juvenile issues. They've got to  
8 file paperwork with the Court, Juvenile Court, and things of that nature. But,  
9 they also do investigations involving juveniles.

10 Q Okay. So, even those folks, when there's a homicide, do they get  
11 called in, too?

12 A When there's a homicide it's basically all hands on deck.

13 Q Okay. All right.

14 A Fortunately for us in this particular incident this occurred early, you  
15 know, it was discovered and all hands on deck were first thing on a Monday  
16 morning. So, we actually had a lot of hands on deck that day.

17 Q Okay. Why is it all hands of deck as you've described it?

18 A Well, it's a homicide. We don't, you know, I mean, we don't have a lot  
19 of those and they're very obviously important and there's a lot of moving parts  
20 going on, a lot of things are happening quickly. I'm sure everybody here has  
21 heard the term first forty-eight. That's relative. You know, we want to gather  
22 as much information on what happened and potentially identify someone as a  
23 suspect as quickly as possible.



1 Q Is it always possible to solve that homicide in the first forty-eight, as  
2 you put it?

3 A No.

4 Q Okay. You mentioned coming in that, well, you said it was Monday  
5 morning? Is that correct?

6 A Yes.

7 Q Okay. Which would have been February 23rd, 2009?

8 A Yes.

9 Q We'll take you back to that. You've pretty much taken us up to that  
10 point?

11 A Yes.

12 Q Specific to that day now, what exactly did you do? I think you went out  
13 to the -- you mentioned you went out to the scene. What did you do after  
14 that?

15 A Well, when I came into work I drove directly to the scene, which was  
16 436 East McKibben. I believe I parked what would be west of the alley, on  
17 McKibben, and approached on foot. Detective Marik was the senior detective  
18 at that time and was working kind of a dual role as both detective and helping  
19 out in the I.D. bureau. He was already there when I arrived. I believe that  
20 Detective Kleman arrived fairly -- well, I don't think he arrived before me, but  
21 he arrived fairly quickly, you know, around the time that I arrived.

22 Q Okay.

23 MR. MILLER: Your Honor, if I could, I'm

1 going to take a second and set up this easel. I think it's State's exhibit '150'.

2 THE COURT: Okay.

3 MR. MILLER: We may refer to it from time  
4 to time.

5 THE COURT: Okay.

6 Q Now, Detective Clark, I've assembled, if you will, or put up I think it's  
7 State's exhibit '150'.

8 THE COURT: It is.

9 Q State's exhibit '150'. Thank you. What are we looking at there on  
10 State's exhibit '150' in general terms?

11 A Well, it's an aerial view of the general neighborhood in which we're  
12 referring to.

13 Q Okay. Do you know where 436 East McKibben is on that particular  
14 exhibit?

15 A I believe so.

16 Q Can you please point to it?

17 A I've kind of got a bad angle here.

18 MR. MILLER: With the Court's permission,  
19 could he --

20 THE COURT: That's fine. That's fine. If  
21 you're going to talk, be close to a mic. Did our laser pointer battery run out,  
22 Monica?

23 BAILIFF: No, it should be good.

1 THE COURT: Oh. If you want the laser  
2 pointer, we have it.

3 A Well, I can see it now. I mean, I could probably point to it with the laser  
4 now. I just wanted to make sure.

5 Q Could you just write 436 East McKibben next to where 436 East  
6 McKibben is?

7 (WHEREUPON, witness marked on exhibit.)

8 Q Okay.

9 A I think I put it right on the roof.

10 Q Okay. Okay. Very good. All right. Now, that's where you arrived;  
11 right?

12 A That's where I was sent to that morning.

13 Q That morning? Okay. What did you do upon arriving on scene?

14 A Well, I parked, as I said, you can see McKibben Street and I parked a  
15 little bit, I think, to the west and walked up the driveway. It was a very, very  
16 cold morning. I don't think it had snowed that night, but we had had quite a  
17 bit of snow in the previous days. The terrain was slippery. It was very cold. I  
18 made my way up the driveway.

19 Q Let me stop you there and ask you a question because we've heard  
20 about the snow in previous testimony. You were here for the previous  
21 testimony, being the lead detective?

22 A Yes.

23 Q There was some testimony, and maybe it was cross examination, but

1 anyway there was testimony about footprints and so forth. As you were -- can  
2 you describe the snow? I mean, you said -- well, was it hard?

3 A It was a hard packed snow.

4 Q Okay.

5 A There had been a lot of travel both by foot and by vehicle in that alley.  
6 Like I said, I don't think the snow was in any way fresh. I think it was, at best,  
7 a couple of days old. But, we had quite a bit of it. The cold weather had  
8 hardened the snow. You know how snow gets kind of frozen hard? There  
9 was a lot of vehicle and foot traffic that kind of packed it all down.

10 Q How long have you lived here in Allen County?

11 A My entire life.

12 Q Okay. There's cold and then there's cold here in Allen County. I  
13 mean, how cold was it that morning?

14 A It was very cold.

15 Q Okay. All right. Go ahead. What did you do as you were walking up  
16 the driveway?

17 A I made my way up the alley. I met, outside in the alley before we got to  
18 the body, I was still in the alley when I began to confer with Detective Kleman  
19 and Detective Marik who were both senior to me at that time. As I said,  
20 Detective Marik had already been there at least for a few minutes and kind of  
21 had an idea of what the situation was. We briefly discussed kind of what was  
22 going to occur at that point.

23 Q Okay. What did you do after that?

1 A Well, I was advised that Detective Marik was there more from an I.D.  
2 standpoint. Detective Marik or someone had told me that the folks that lived  
3 at the house had already been taken to the Police Department.

4 Q Okay. Those folks, would that be Tarah and Sonya, as you come to  
5 know them to be?

6 A As I later found out, that would be Sonya Burkholder and Tarah Carter.

7 Q Okay. So, they were not there when you arrived?

8 A They were not present when I arrived.

9 Q Okay. Do, Detective, or, I guess at that time I.D. Officer Marik --

10 A He's still a Detective.

11 Q Okay. Detective Marik was there?

12 A In my mind, anyhow.

13 Q Okay. Detective Marik was there and he was doing his I.D. stuff,  
14 collecting evidence?

15 A Well, yea. The decision, I guess, collectively was made that he would  
16 continue with processing, photographing, all the things that I.D. officers do,  
17 and the decision was made that Detective Kleman would return to the Police  
18 Department in order to begin speaking with Miss Burkholder and Miss Carter  
19 in order to gather information about what all occurred that morning, and I  
20 would remain at the scene and make observations and things of that nature.

21 Q Okay. Now, did you go into the house at 436 East McKibben that  
22 morning?

23 A Eventually.

1 Q Okay. Did you see any indications that the occupants of that house  
2 owned a gun?

3 A No.

4 Q Okay.

5 A No.

6 Q Okay.

7 A I think we -- I mean, if I may?

8 Q Sure.

9 A Before I ever got that far I stood by while Detective Marik did many  
10 things outside the house in relationship to Mr. Warrington, who I later learned  
11 was the victim, before I ever made it into the house.

12 Q Okay.

13 A I made several observations at that point.

14 Q What observations did you make outside the house before you went  
15 into the house?

16 A Well, at some point Mr. Warrington was identified to me. I was told  
17 that he had been at work.

18 MR. RION: I just don't know where we're  
19 going as far as hearsay. I don't know if he's going there, but if he is, then I  
20 would object to hearsay.

21 MR. MILLER: Your Honor, I think it's in the  
22 context of explaining what he did in terms of his investigation.

23 THE COURT: If it's in that context then I'll

1 overrule the objection. But, if it gets to a point that it's more than that, I'll  
2 entertain the objection.

3 MR. MILLER: Understood, your Honor.

4 A I guess -- well, I would put it like my investigation at that point revealed  
5 that Mr. Warrington had just been returning home from work.

6 Q Okay.

7 A And that would have been during early morning hours, around  
8 five-fifteen A.M. When I viewed the scene it appeared to me that Mr.  
9 Warrington had been shot multiple times and possibly from behind. It  
10 appeared that he had all of his belongings, including his wallet and things of  
11 that nature. That struck me.

12 Q Why?

13 A Well, it didn't appear, given the weather being as cold as it was, being  
14 the time of day that this more than likely occurred, and the fact that it  
15 appeared the man had all of his belongings and was in the process of  
16 opening the door to the home when he was attacked, it did not seem to me  
17 that it was a random event. It seemed more like overkill, so to speak.

18 MR. RION: Your Honor, I'm going to  
19 object. We're getting into opinion here and not the facts.

20 THE COURT: Yea, I'll sustain the  
21 objection. The jury will disregard the term overkill. You can continue  
22 questioning.

23 MR. MILLER: Okay. Thank you, your

1 Honor.

2 Q Okay. You mentioned a random act. I mean, did anything at the  
3 scene indicate to you as the detective on this case that this was a robbery?

4 A No.

5 Q Why? What was there that indicated that this was not a robbery that  
6 you observed?

7 A Well, he had all of his belongings. He had everything that he came  
8 home with that morning. He had his keys inside, you know, the door. The  
9 door was -- well, I don't remember if it was -- I don't think it was open, but the  
10 door easily could have been opened by robbers, I guess. I mean, the time,  
11 the place, the weather, it just did not suggest anything random.

12 Q Was there anything, whether it be your observations outside or inside  
13 the home, and I know we're talking about outside, but we'll just say outside or  
14 inside right now, was there any indication at the scene that the occupants of  
15 the home might be responsible for this incident?

16 A Not in my opinion.

17 Q As an investigator, --

18 MR. RION: Objection as to his opinion.

19 THE COURT: Okay. I'll sustain it to his  
20 opinion. Now, he can testify as to facts.

21 Q Okay. But, were they, at this point, they being the occupants -- by the  
22 way, did you learn who the occupants of the house were while you were at  
23 the scene?



1 A Yes.

2 Q Okay. I can stop calling them the occupants. Was it Sonya and  
3 Tarah?

4 A Again, it was Sonya Burkholder and Tarah Carter.

5 Q Okay. Did you necessarily then at that point dismiss them totally as  
6 suspects?

7 A Well, it's a little early for anything like that. I mean, we're gathering  
8 immediate information. I did go in the house at one point and walked through  
9 the house. It was very well kept. It was clean. It was in order. I mean, I  
10 didn't search the house like it was, you know, -- I just walked through the  
11 rooms and looked in the closets and peeked in drawers, you know, just in  
12 general and everything in that home appeared to be in order, aside from the  
13 doorway.

14 Q Okay. Yea, the obvious. Was there anything - I'll go back to my  
15 question - was there anything at that scene that would indicate to you as an  
16 investigator that the occupants of this house may have been responsible for  
17 this?

18 A Well, again, I hadn't talked to them at this point. They were already at  
19 the Police Department. But, from my observations, not at all.

20 Q Okay. But, they were not dismissed as suspects outright?

21 A Well, I mean, we don't dismiss anyone -- you don't dismiss anyone as  
22 a potential suspect. But, you follow the evidence.

23 Q Understood.

1 A And as all of this stuff is developing quickly and we have several  
2 people working the case in other, you know, places and forms we're following  
3 the evidence.

4 Q Okay. Now, while you're at the scene did anything happen that caused  
5 you to become aware of a potential suspect, or a person of interest, if you  
6 will? I don't really know the difference, but people use those terms.

7 A Yes.

8 Q Okay. What was that?

9 A While I was at the residence I was approached by Curt Hile and I think  
10 he was a patrolman then. He's a Sergeant now. I believe he testified  
11 already. He came up to me and said, "Hey, I know that this Sonya Burkholder  
12 had an incident a couple of years ago with a guy named Markelus Carter and  
13 it was a domestic that turned into a stand-off and there might have been a  
14 gun involved and things of that nature."

15 Q Okay. While we're at the scene and while I'm thinking about it, you  
16 know, you were mentioning prior testimony. There was prior testimony, going  
17 back days now, but I think it was --

18 MR. RION: I guess I'm going to object. It's  
19 leading and we're not here to rehash prior testimony.

20 MRS. KOHLRIESER: Can he finish his  
21 question?

22 MR. MILLER: I'm just trying to develop the  
23 testimony.

1 THE COURT: Yea. Develop a question  
2 out of that.

3 Q Going back days, there was a patrolman, Patrolman Douglass, who  
4 testified. He mentioned a car leaving the scene. Do you recall that testimony  
5 that he observed the car leaving the scene?

6 A Well, those things would have taken place after what we're discussing  
7 now.

8 Q Okay. But, I'm trying to get focused on this area now. Let's just get  
9 that out there so we're not jumping all over the place when we go to 122.

10 A Yea. Yea, I recall Patrolman Douglass' testimony.

11 Q Okay. Did you follow up on that car?

12 A I did not. Detective Miller did.

13 Q Okay. Was there anything during the investigation that, as the lead  
14 detective, led you to believe that that car had anything to do with this?

15 A No. It was a random lady taking her son to work, I believe.

16 Q Okay. Just so I don't have to bounce back and forth. Okay. Now, you  
17 mentioned Patrolman Hile and him bringing up the name Markelus Carter.  
18 Prior to Patrolman Hile mentioning Markelus Carter's name had you ever  
19 heard of Markelus Carter?

20 A No, not that I can recall at that time.

21 Q Okay.

22 A I've been around -- I guess, you know, that was 2009 and so I started  
23 in 1986 and, I mean, I've worked all areas of Lima, but I didn't recall ever --

1 you know, because I thought about that since then and I do remember

2 thinking that, you know, I didn't have any idea who he was at that time.

3 Q Okay.

4 A I still don't believe I knew him before that point and time. I actually did

5 at one point go back and look through reports to see if I had ever come

6 across him before, but I couldn't find any that I had.

7 Q Okay. But, particularly at that time a light bulb didn't go off in your

8 head or anything like that?

9 A No. I had no idea who he was at that point.

10 Q Okay.

11 A And I wasn't involved in the 2007 incident. I actually think I was on

12 vacation when that occurred.

13 Q Okay. Now you have a suspect, or, a potential suspect's name, I

14 guess. Did you still keep in mind the possibility of other suspects even at this

15 point?

16 A Certainly.

17 Q You have this information about Markelus Carter. Did you pass that

18 information on to others working the case?

19 A Yes.

20 Q Was one of those others Officer Godfrey?

21 A What I believe initially occurred was when Patrolman Hile gave me that

22 information I obviously thought, given those parameters that he told me, that I

23 was interested in speaking with Mr. Carter, or, at least somebody should find

1 him and speak to him. The first thing I did was ask one of the supervisors  
2 that was on duty from day shift if anyone -- you know, I didn't know if I was  
3 the first person that had gotten that information or if that information was  
4 common knowledge to other officers that had been working that morning and  
5 may have known about that other incident. But, what I did was I contacted  
6 the shift supervisor and I said, "Hey, has anybody gone by Mr. Carter's home  
7 to see if he's at home?" I was informed that, not to their knowledge, that no  
8 one had. So, I asked the on duty supervisor to do that, to have somebody  
9 drive by Mr. Carter's home and see if he was there.

10 Q Okay. What did you do then?

11 A I believe that it was around eight o'clock that it got back to me that  
12 patrol officers had gone to Mr. Carter's house and it was dark and it didn't  
13 appear that anyone was home. You know, I was working the phones and  
14 talking to several people, including my immediate supervisors, which  
15 Sergeant Godfrey would have been one of those at the time. I know  
16 Lieutenant Baker was involved and other detectives, obviously, were  
17 involved. But, eventually I received word that Godfrey was aware of Mr.  
18 Carter.

19 Q Okay. Once you received word that Mr. Godfrey was aware of Mr.  
20 Carter what happened after that?

21 A I don't remember how it went, but Sergeant Godfrey asked if I wanted  
22 him to try to contact Mr. Carter because he had been meeting with him in  
23 recent days or weeks in regard to something else and he thought that he

1 might have a current cell phone number. So, I said, "Yea, see if you can get  
2 ahold of him."

3 Q Okay.

4 A So, then Sergeant Godfrey started making those efforts. At some point  
5 then I decided that I was going to leave the area of 436 McKibben Street and  
6 drive over to Mr. Carter's house and just have a look/see for myself.

7 Q And did you do that?

8 A I did.

9 Q Okay. When you did that what happened? What did you find, if  
10 anything?

11 A Well, again, there's a lot of things going on at this time - a lot of phone  
12 calls and a lot of conversations. At some point Sergeant Godfrey got back to  
13 me and told me that he had spoken to Carter and Carter was supposed to be  
14 on his way up. At some point Sergeant Godfrey had given me a brief  
15 description of Carter's vehicle being, well, I think it was a '96 black Ford and  
16 he had given me a license plate. Again, at this point I didn't know what Mr.  
17 Carter looked like. But, with the information that I had gotten from Godfrey,  
18 and even though Godfrey said that Carter told him that he was going to be on  
19 his way, I thought I would just kind of drive over there and see what I could  
20 see.

21 Q Okay.

22 MR. RION: I guess I'm going to only object  
23 as to what Godfrey said because I think Godfrey's testimony was slightly

1 different as far as what Carter told him.

2 THE COURT: Well, the jury can hopefully  
3 remember Godfrey's testimony and this testimony. The objection will be  
4 overruled. Again, he's just explaining what his next step was and why he took  
5 that next step. So, overruled. Go ahead.

6 MR. MILLER: Okay. Thank you, your  
7 Honor.

8 Q When you went over to 122 East Eureka to have a look/see, as you put  
9 it, were you able to locate any vehicle that you thought was Mr. Carter's  
10 vehicle?

11 A Well, I came down Eureka from Central, which would be from the east.  
12 If you're familiar with Eureka Street it's a fairly tight street. Parking is allowed  
13 on what would be the north side and no parking is allowed on the south side.  
14 There was pretty much wall to wall cars all the way down the street. As I  
15 approached 122 East Eureka I saw a black Ford Explorer parked along the  
16 curb, but I couldn't see the rear plate because there was a car parked in close  
17 proximity behind it and the car, the black Ford, was not parked directly in front  
18 of 122 East Eureka. So, as I passed by and looked, well, I don't remember if I  
19 looked in my rear view or if I looked back over my shoulder, but I saw the  
20 front plate and it wasn't the same plate that Godfrey had given me as the  
21 plate number to Mr. Carter's vehicle. So, it really didn't click at that point that  
22 it was a black Ford Explorer. I did have a '96 black Ford with a different plate  
23 number and as I passed by I saw a black Ford and it had a different plate

1 number. It was parked a house back. It didn't really click at that point, but  
2 what I did was I continued down the block and pulled into the dentist's office  
3 parking lot, which is probably three or four houses down on the opposite side  
4 of the street from where Mr. Carter lives.

5 Q Okay. So, what happened after that?

6 A So, anyhow, I'm just kind of watching and observing. I see a fellow  
7 approach the black Ford and the hood was up at some point and he was  
8 working underneath the car briefly. At that point and time it still hadn't  
9 dawned on me, again, because I didn't know Mr. Carter or what he looked like  
10 other than, well, I don't even know if I had a height or a weight or anything,  
11 but he was a black male probably about my age. As I'm sitting in the dentist's  
12 parking lot I see, at the time, Sergeant Leary, Brian Leary, and --

13 Q Who does he work with?

14 A He, at the time, was working for the Drug Unit, the Drug Task Force.

15 Q Okay. Was he also an L.P.D. officer?

16 A Yea. He was a Sergeant.

17 Q Okay.

18 A Yea. So, anyhow, again, there's a lot of things going on. The word is  
19 starting to spread that we had a homicide. I don't know what all is out there  
20 with the other officers and stuff at this point. But, I see Sergeant Leary come  
21 down Eureka Street in a plain car and I remember radioing him, or calling him  
22 on the phone, and saying, "Hey, I've got this; you can, you know, move on  
23 down the road. I don't want you, you know, getting in the way." He's like,



1 "Well, that's Carter right there." It's the guy that's working on the black Ford.  
2 So, Leary pulls all the way down the road to the end of the block and turns  
3 around. In the meantime Mr. Carter had gotten into the black Ford Explorer  
4 and I was still in the parking lot of the dentist's office and Mr. Carter began  
5 pulling away from the curb.

6 Q Okay.

7 A In the black Ford Explorer.

8 Q All right. So, now he pulls away from the curb. What do you do when  
9 that happens?

10 A Well, it was early in the morning. There was morning traffic. He got to  
11 the corner and turned north on Main. I was waiting for Sergeant Leary to  
12 clear past. We got kind of caught up in traffic as Mr. Carter continued  
13 northbound on Main Street.

14 Q You mentioned that intersection with Main.

15 A Main and Eureka.

16 Q Is there a car wash there?

17 A On the opposite side.

18 Q Okay. Go ahead.

19 A We had the stop sign. There was a lot of traffic on Main Street. We  
20 got caught up in traffic. Mr. Carter was able to have a bit of a head start on  
21 us at that point. So, we did -- I radioed if there was any units, any marked  
22 police cars, in the downtown area because Sergeant Leary was in a plain car  
23 and I was in a plain car and we would have had no way of stopping Mr.

1 Carter.

2 Q You can't stop somebody in a plain car?

3 A Well, it's not very easy. You would have to honk your horn and wave  
4 your hands, I suppose.

5 Q Okay.

6 A But, I radioed for a marked unit. There was one that was available, but  
7 he wasn't immediately downtown. Mr. Carter turned westbound on Spring  
8 from Main. Eventually other P.A.C.E., we called our drug unit at that time  
9 P.A.C.E, but there were other P.A.C.E. officers in the area and they were able  
10 to get in behind Mr. Carter and keep an eye on him and where he was  
11 heading and radio that information. I was far enough back where I could kind  
12 of see where everybody was still heading. Eventually a patrol unit was able  
13 to catch up with Mr. Carter on Spring Street. I think it was Spring and  
14 Jameson, just west of there, where they eventually stopped him.

15 Q Now, from 122 East Eureka Street where you say Mr. Carter pulled  
16 away from the curb and then proceeded to where you've just described, is  
17 that heading towards the Police Station?

18 A No. That's heading west, away from town, away from downtown.

19 Q Okay. Let's say if you were at 122 East Eureka Street and if you  
20 wanted to go to the Police Station, well, which direction would you have to  
21 travel?

22 A You would have continued north to the Square on Main Street. You  
23 wouldn't have turned west on Spring.

1 Q Okay. Now, you mentioned that Mr. Carter was eventually stopped;  
2 right?

3 A Yes.

4 Q Was that stop what was shown earlier in this case with Officer  
5 Montgomery?

6 A Yes.

7 Q Were you there?

8 A Eventually.

9 Q Okay. Were you there during the stop?

10 A Not the initial stop.

11 Q Okay. Well, I'll say it this way - when you arrived was Mr. Carter still at  
12 the stop?

13 A Yes.

14 Q Okay. Do you remember what you were wearing? Just so we have  
15 some reference on that video.

16 A I believe I had on a white sweater, a three-quarter length leather  
17 jacket, and I think I had gloves on.

18 Q Okay.

19 A Driving a red Ford Taurus.

20 Q Okay.

21 A Well, maroon actually.

22 Q Now, at the stop did you have any conversation with Mr. Carter?

23 A Eventually.

1 Q Okay. What did you tell him and what did he say?

2 A Well, my first concern was when I got out of my car Mr. Carter was  
3 being handled by the P.A.C.E. officers, or the drug unit guys that were there,  
4 and the first thing I did was I wanted to make sure this was the Mr. Carter that  
5 I wanted to speak to. I think I tried to confirm that with either Mr. Carter  
6 himself or the officers. But, the first thing I wanted to do was to make sure  
7 everybody there knew that he was not under arrest and that I just wanted to  
8 talk to him.

9 Q Okay. Now, when you say handled, what do you mean by they were  
10 handling him?

11 A Well, they had him out of the car. I think they had him out of the car  
12 when I got out of my car and somebody was patting him down.

13 Q Is that standard procedure?

14 A It's an officer safety thing.

15 Q Okay. So, what happened after that?

16 A Well, I wanted to make sure everybody was under the, you know, or  
17 realized that, okay, I don't know what everybody's been told but he's not  
18 under arrest and I just wanted to talk to him.

19 Q Okay.

20 A So, I got that accomplished. At some point I then told Mr. Carter that I  
21 was investigating a shooting that took place on McKibben and that there had  
22 been a homicide.

23 Q Okay. What was Mr. Carter's reaction at that point?

1 A I would say that he exploded in emotion.

2 Q Okay. Was that, again, going back to the video we saw through Officer  
3 Montgomery, was that what was depicted on that video?

4 A Yes.

5 Q Did he tell you why he was so emotional?

6 A He kept -- he kept, well, I don't know if screaming is the right word, but  
7 he kept wanting, he kept referring to his daughter, his daughter, his daughter,  
8 and was she okay and he had to see her. I told him multiple times that his  
9 daughter was fine.

10 Q Okay. Did he then calm down after you told him that?

11 A No. I mean, he threw himself on the ground. He was just -- the whole  
12 thing was kind of bizarre to me.

13 Q Well, okay. We've got it on the tape.

14 MR. RION: I'll object to the commentary.

15 THE COURT: Okay. Sustained. The jury  
16 will be instructed to disregard the commentary of "bizarre".

17 Q As a detective are you trained either by just through experience or any  
18 kind of formal training to monitor people's reactions as you tell them things?

19 A Yea. I think that just comes with experience and talking to people --

20 Q Okay.

21 A -- in the battlefield. You learn it on the go.

22 Q Okay. Have you found that training and/or experience to be  
23 valuable in your investigations?

1 A Yes.

2 Q What kind of things as an investigator or detective are you looking for  
3 in people's reactions? Well, are you looking at their reactions to try to  
4 determine whether or not they're telling you the truth?

5 A Well, I mean, your reaction should match the intensity, I guess, of  
6 what's going on. You know, this was obviously a very serious -- and I did tell  
7 the man that, you know, I was investigating a shooting that occurred on  
8 McKibben and it was potentially a homicide. You know, his daughter was  
9 staying at that residence, at least part-time. But, I don't know how I can  
10 answer the question without -- well, it just didn't, it just didn't appear right to  
11 me.

12 Q Well, let me ask you a question that you might be able to answer.  
13 After you told him that his daughter was fine, based on your experience as a  
14 detective, were you surprised by his continued demeanor?

15 A Yes, very much so.

16 Q Did you see any tears coming out of his eyes as you watched him?

17 A No.

18 Q At that point did you -- I mean, you were obviously looking for Mr.  
19 Carter. Did you ask him to go down to the station or did you ask him to do  
20 anything so that you could get him someplace where you could talk to him?

21 A I don't know for sure exactly how it was worded, but I was like, "Listen,  
22 we just want you to come down to the station and talk to us about what's  
23 going on."

1 Q And was he willing to do that?

2 A Yea. Yea. In fact, he tried to get into my car.

3 Q Okay. Did you allow that?

4 A You know, I think for a brief second I did consider it. But, my car door  
5 was locked and so he was unable to get in. Then it kind of clicked and I was  
6 like, 'you know, I don't think I want him riding with me in my car and so let's  
7 see if we can coax him back and let somebody else give him a ride'.

8 Q Is that also sort of an officer security issue?

9 A Yea. Again, all of this happened, as you can see from the video,  
10 everything happened pretty quickly. He was eventually escorted back  
11 towards the patrol car and he agreed to be driven to the Police Department.  
12 He was not handcuffed. He went voluntarily.

13 Q Are patrol cars outfitted on the inside differently than --

14 A They have a cage. You know, you're basically in a cage in the back  
15 seat.

16 Q Is it usual to transport people in the back seat of a patrol car?

17 A We transport a wide variety of people, both in trouble and not in  
18 trouble, --

19 Q In the back of patrol cars?

20 A -- in the back of police cars.

21 Q Okay. So, that was, based on your experience, --

22 A I've been in the back of a police car getting a ride before.

23 Q But, based on your experience was it unusual to put Mr. Carter in the

1 back of a patrol car rather than your unmarked car?

2 A Not at all.

3 Q Okay. Now, he's going to the station. His vehicle was still there?

4 A Correct.

5 Q Correct? Okay. What happened with his vehicle?

6 A I impounded it.

7 Q Why?

8 A It had improper registration and where he had stopped it was partially  
9 blocking the driveway.

10 Q By improper registration --

11 A It had two different plates, front and back.

12 Q Okay. Now, Markelus goes to the station. Is that when he was  
13 interviewed? To your knowledge is that when he was interviewed by  
14 Detective Kleman?

15 A Yes.

16 Q Okay. What were you doing while the interview was going on with  
17 Detective Kleman, if you recall?

18 A I eventually -- well, I impounded the vehicle. I did a brief impound  
19 inventory search of the vehicle, which is basically a limited search for  
20 valuables and things of that nature so if we impound somebody's stuff they  
21 don't come back later and say, 'hey, where's my bag of jewels that was in  
22 there', or, you know, 'my big bag of money'. We do a brief impound inventory  
23 checking for valuables. I did that. I did not see anything that I needed to be



1 concerned about. I impounded it.

2 Q By concerned about, do you mean with reference to this homicide?

3 A With reference to anything.

4 Q Okay. Nothing out of the ordinary?

5 A Nothing out of the ordinary. I stood by for the impound. Then  
6 eventually I returned to the Police Department.

7 Q Okay. Now, during the interview, and I don't know how you would  
8 come across the information, I'll ask you, but during the interview did  
9 Markelus provide investigators information that allowed them to eventually  
10 obtain a search warrant for his house?

11 A Yes.

12 Q Did you learn of that information somehow during the course of the  
13 investigation?

14 A Well, when I got back to the Police Department that mid-morning,  
15 again, we started at six-thirty, I'm not sure what time it was, but it was  
16 mid-morning and I got back to the Police Department and I was informed by  
17 Detective Marik, I believe, or Detective Kleman maybe, or one of the  
18 supervisors, that during the interview Mr. Carter had admitted to having a  
19 .357 in his house, in which he's under disability, and so they had made the  
20 decision that they were going to seek out a search warrant in order to retrieve  
21 that weapon.

22 Q Okay. Did that search warrant actually get obtained?

23 A Yes.

1 Q Okay. So, there's the interview and then we go to, or, that interview  
2 spawns the search warrant, the ability to get a search warrant?

3 A Yes.

4 Q Was the search warrant for 122 East Eureka?

5 A Yes.

6 Q How many search warrants -- well, let's put it this way. How many  
7 search warrants were there relative to 122 East Eureka?

8 A Two.

9 Q Two? Okay. Were you there at the beginning? Were you there for  
10 any of the search at 122 East Eureka?

11 A Yes.

12 Q Okay. Do you recall what time you arrived at 122 East Eureka for the  
13 search?

14 A I'm sure it's documented in my report, but I believe that the searching  
15 activity or the searching part of all of this began around noon.

16 Q Okay. Did you get there as soon as the search began?

17 A Yes.

18 Q Okay. Now, we've seen the pictures of 122 East Eureka. There's, I'll  
19 call it crime scene tape, some sort of yellow or orange tape around 122 East  
20 Eureka. You've seen those. Why was that -- do you recall that being there?

21 A Vaguely from having seen it refreshed my mind; yea.

22 Q Is it customary to put that sort of tape around a search warrant in this  
23 sort of a case?

1 A Well, yea. We -- well, yes and no, I guess is the best answer.

2 Q Well, explain.

3 A They put crime scene tape up around crime scenes all the time.

4 Anytime there's a shooting or a serious crime there's going to be crime scene

5 tape put up. For instance, at Sonya Burkholder's house where this took place

6 I'm quite sure there was crime scene tape wrapped around the general

7 vicinity. It's not -- well, I can't say that it's done on a regular basis when

8 serving search warrants.

9 Q Okay. Do you know why it was done on this particular basis?

10 A I think because it was in the middle of the day and we didn't want

11 anybody - I didn't put it up - I'm speculating at this point.

12 Q I understand. Yea, I'm just asking if you know why it was put up.

13 A But, I would say just to keep any interested participants back out of the

14 way and so they didn't come in when we weren't paying attention or

15 whatever.

16 Q How many search warrants have you been on in your career, if you

17 know?

18 A A lot.

19 Q Okay. As an investigator do you want people coming up and knocking

20 on the door and trying to come into the house?

21 A No, and we've had that happen on multiple occasions.

22 Q Okay. Does it usually happen during the day?

23 A I mean, I don't know that I can put a time on it. But, it happens.

1 Q Okay.

2 A We posted an officer at the door as well.

3 Q Okay. For the same reason?

4 A Yes.

5 Q You just don't want people just to happen to walk in not knowing there  
6 was a search warrant? Is that correct, or incorrect?

7 A Yea. I mean, we're busy. You don't want anybody coming in that  
8 you're unaware of.

9 Q The first search warrant, what were officers looking for during the first  
10 search warrant?

11 A The first search warrant was for guns and what I would say, or, I would  
12 describe as related items.

13 Q Okay. Ammunition?

14 A Yea, I think so.

15 Q Did you participate in that search?

16 A Yea.

17 Q In what way did you participate?

18 A Well, again, I participated in both searches. My role was more of  
19 directing traffic, being a facilitator of the scene, people were searching,  
20 getting Mr. Whitney to where he needed to be to take photographs and things  
21 of that nature, and I was handling the phones, handling a lot of phone calls,  
22 receiving information and passing out information. A lot of things were going  
23 on. So, while you could say I was actively involved in the search, I'm not

1 actively involved in the search. I'm just kind of helping to facilitate the search,  
2 so to speak.

3 Q Okay. Did you collect, and I want to be very specific about this, did  
4 you collect any evidence on either one of those search warrants?

5 A I did not collect any evidence.

6 Q Okay. Now, you mentioned there were two search warrants. The first  
7 search warrant, was there a strict termination of the first search warrant  
8 before the second search warrant began? In other words, did officers -- let  
9 me rephrase that. Was there a point and time when the first search warrant  
10 was over and officers cleared the house?

11 A Yea. We didn't leave, though.

12 Q Well, when I say clear the house, I mean everybody leave. Did that  
13 happen?

14 A I don't think -- I don't think we left. I think that we stopped. I think that  
15 we were searching for, well, on the first search warrant we were searching for  
16 guns.

17 Q Uh-huh.

18 A We found a couple of guns.

19 Q Okay.

20 A During the course of that search we saw things on the kitchen table  
21 that made us go hmm. We felt at that point that we were going to need to get  
22 a second search warrant.

23 Q And did you get that second search warrant?

1 A And we did eventually get that second search warrant.

2 Q And what was that second search warrant for?

3 A That second search warrant was for items that we believed could be  
4 related to the homicide investigation.

5 Q Okay. So, was the second search warrant broader in scope than the  
6 first?

7 A Yes.

8 Q Or the same?

9 A Broader.

10 Q Okay. In what sense? In what way?

11 A Well, in ways of recovering items that we believed could be related to a  
12 homicide investigation.

13 Q Rather than just guns and ammo. and things like that?

14 A Rather than just guns, specifically guns and ammo.

15 Q Okay. Now, during that, well, we'll call it the first search warrant, I  
16 guess, -- well, let me ask you this. Do you think of this, I mean, I know there  
17 were two search warrants, but do you think of it as two searches or just one,  
18 in a sense?

19 A In a sense? I mean, in a sense, one.

20 Q Okay. Why is that?

21 A Because we never really left.

22 Q Okay. Is it fair to say that --

23 A We stood down kind of, I guess you could say, waiting for the second

1 search warrant to be completed.

2 Q Okay. Very good. All right. So, during the initial period of the search,  
3 because I'll start talking about it in terms of one search so it doesn't get too  
4 confusing, during the initial period of the first search did you actually locate  
5 any firearms?

6 A We located two firearms.

7 Q Okay. What were they?

8 A One was a .357 Smith & Wesson revolver and the other one was a  
9 Glock nine millimeter semi-automatic handgun.

10 Q Did you touch any of these, or, either of these firearms?

11 A I did not touch either of those weapons.

12 Q Okay. Now, at this point were you aware of the caliber of the casings  
13 out at 436 East McKibben?

14 A Yes.

15 Q Okay. So, when you come across, or, when investigators, I don't know  
16 whether it was you or somebody else searching, but when you are made  
17 aware of this .357 did you consider that to be the murder weapon, or,  
18 potentially the murder weapon?

19 A Well, I believe the .357 is why we were there in the first place, which  
20 we obviously knew was not the murder weapon.

21 Q Well, it may be obvious to you. But, why? Why was --

22 A Mr. Carter, in his interview, said he had, I believe, a .357 Smith &  
23 Wesson in his studio, which is what led to the search warrant. I know that a

1 .357 fires .357 rounds and not nine millimeter rounds. So, going in that  
2 search was based under the Weapons Under Disability that Mr. Carter  
3 basically admitted to during his interview.

4 Q Okay. So, when you find that .357 you can kind of discount that as the  
5 murder weapon? Is that what you're telling us?

6 A Correct.

7 Q Okay. Did you find another gun?

8 A We found a Glock nine millimeter in an upstairs bedroom.

9 Q Okay. Now, you knew the casings at the scene were nine millimeter  
10 and you find a nine millimeter gun?

11 A We also observed a box of shells on a shelf of nine millimeters.

12 Q Okay. Let's focus on the Glock for a second. At that point did you  
13 think possibly that that was the murder weapon?

14 A Well, I mean, it's a nine millimeter.

15 Q Okay. So, is that a 'yes'?

16 A You can't rule it out.

17 Q Right?

18 A Right.

19 Q Did it later during your investigation turn out not to be the murder  
20 weapon?

21 A Well, it was ultimately sent to B.C.I. for testing and it was determined  
22 that that gun did not match the shell casings and I think the bullets, too, that  
23 were found at the scene.



1 Q Okay. All right. Now, this nine millimeter -- during the course of the  
2 search did you -- during the course of the search did investigators receive any  
3 information on the nine millimeter, or, the Glock, to be more specific?

4 A Yes.

5 Q Okay. Tell us about that.

6 A Well, after we had found the guns in question in the house it was  
7 decided amongst, or, the consensus that we were going to go ahead and  
8 arrest Mr. Carter for what we would call suspicion of Having Weapons Under  
9 Disability. After making that determination Mr. Carter was eventually back  
10 outside the residence with another person. We went outside and approached  
11 Mr. Carter and we placed him under arrest for suspicion of Having Weapons  
12 Under Disability. At that time a person, later identified as Eric Bennett,  
13 handed me a note while Mr. Carter was being arrested.

14 Q Okay. Did that note relate to this Glock?

15 A I believe so.

16 Q Okay. Did you read the note?

17 A I did.

18 Q Okay. What did the note say?

19 A It said something along the lines of 'be careful' and, you know, 'make  
20 sure to check in the upstairs closet', or hallway closet, or something along  
21 those lines.

22 Q Okay.

23 A It was from another person.

1 Q Who was it from?

2 A It was from Attorney Ken Rexford.

3 Q When you say Attorney Ken Rexford, do you know Ken Rexford?

4 A I do.

5 Q And who do you know him to be?

6 A An attorney in Lima.

7 Q Okay.

8 A And I believe Mr. Carter's attorney at that time.

9 Q Okay. Was, in fact, the Glock found in a closet upstairs?

10 A Yea. I think the note said hallway closet, but the gun was actually  
11 found in a bedroom closet. It had been found actually prior to having received  
12 the note.

13 Q Okay. That was going to be my next question. Had you found that  
14 Glock prior to receiving the note?

15 A The Glock was already recovered when I got the note.

16 MR. MILLER: Your Honor, can we  
17 approach one second?

18 THE COURT: Okay.

19 (WHEREUPON, Court and counsel had a brief discussion at the Bench, on  
20 the record, as follows.)

21 MR. MILLER: Before I get into a different  
22 subject area I didn't know if you wanted to take a break.

23 THE COURT: So, you're at a logical point

1 to take a break?

2 MR. MILLER: Yea, we are.

3 THE COURT: Okay.

4 (WHEREUPON, Court continued on the record, as follows.)

5 THE COURT: Okay. Ladies and  
6 gentlemen of the jury, we're going to continue with the testimony of Detective  
7 Clark, but we'll take a break here now. I'm trying to time this for everybody's  
8 convenience. We'll go for a fifteen minute break.

9 Remember the admonitions I've been giving you all along not to  
10 discuss the case or formulate any opinions.

11 So, we'll stand in recess until roughly a quarter till three.

12 (WHEREUPON, COURT WAS IN RECESS.)

13

14 THE COURT: Thank you. Again, for the  
15 record, we're reconvening in CR2014 0139, State of Ohio -vs- Markelus Q.  
16 Carter. The defendant is present in Court with counsel. The State is present.  
17 The jurors have returned from the afternoon recess. We'll continue with the  
18 direct examination of Detective Clark. Mr. Miller?

19 MR. MILLER: Okay. Thank you, your  
20 Honor.

21 **DIRECT EXAMINATION OF DETECTIVE TIMOTHY CLARK CONTINUED**

22 **BY MR. MILLER:**

23 Q I think where we were when we left off, if I recall correctly, was at the

1 search that took place at 122 East Eureka. Now, did you find any ammunition  
2 during the search?

3 A Yes.

4 Q What was that?

5 A It was a box of Winchester nine millimeter, and it had, I think, seven  
6 rounds in it.

7 Q Okay. What else at the search did you find of any interest to your  
8 investigation?

9 A Well, on the kitchen table, as I had mentioned earlier, things that we  
10 observed in plain view which led to seeking the second search warrant was  
11 we saw paperwork that we found to be interesting, meaning we found some,  
12 well, what appeared to be copies of e-mails between Ken Warrington and  
13 Sonya Burkholder.

14 Q Okay.

15 A We found Court paperwork from the 2007 incident, including police  
16 reports and Court transcripts, I think. We also found what appeared to me to  
17 be kind of a written out script, which was later testified, in regard to Pam  
18 Callahan and Husky Refinery.

19 Q Okay.

20 A We also found a pair of gloves on the kitchen table.

21 Q Okay. Where were the gloves, if you recall, in relation to the Court  
22 documents and e-mails that you've mentioned?

23 A They were all -- I mean, there was a lot of stuff on the kitchen table.

1 Like everywhere else, there was stuff everywhere. Those paperwork items  
2 were laying right out on top of everything else and the gloves were just  
3 randomly laying there as well.

4 Q Okay. When you found the gloves, if you recall, was there anything  
5 covering them?

6 A They were just laying on the kitchen table.

7 Q Okay. On top of other stuff?

8 A Yea. We took the gloves because of the weather. We assumed that  
9 had Mr. --

10 MR. RION: Objection.

11 A Yea, you're right. Wrong word.

12 THE COURT: He stopped.

13 MR. MILLER: He stopped. Okay.

14 Q You mentioned gloves. Did you find any other clothing items that you  
15 considered at the time to be important to the investigation?

16 A Eventually.

17 Q Okay. What were those other items?

18 A Well, at some point during that second search warrant I received a call  
19 from Sergeant Godfrey who had been out and about, like I said. I was in  
20 there and, you know, people were finding things and getting Kenny and  
21 pointing out and getting things collected and photographed and things of that  
22 nature and I was taking phone calls and making phone calls and basically  
23 playing quarterback. At one point Sergeant Godfrey called me and said that

1 he was able to, or, he was in the process of doing a canvass of the  
2 neighborhood where Mr. Warrington had been found and he had spoken to a  
3 lady who had indicated that she had observed someone run from the alley, or  
4 come from the alley, after having been woken up by gunshots.

5 MR. RION: I'll object. It's now double  
6 hearsay, I guess.

7 MR. MILLER: Well, again, it's in the  
8 development and course of his investigation.

9 THE COURT: I'm going to overrule it. It's  
10 just explaining what he did.

11 Q Okay. Go ahead, Detective Clark.

12 A Well, again, I received a phone call from Sergeant Godfrey. He had  
13 spoken to someone in the neighborhood who had indicated that a person was  
14 seen leaving the alley wearing camouflage clothing.

15 Q Okay. Did you later learn this person's name who saw this individual?

16 A Rosalind Johnson.

17 Q Okay. Now during, well, we keep referring to the first and second  
18 search warrant, but during the first search warrant, or either search warrant,  
19 did you find cocaine in the house?

20 A Yes.

21 Q Do you recall whether or not during the course of your investigation  
22 you learned the weight or amount of the cocaine?

23 A I did later find out the amount - approximately.

1 Q And what was that amount?

2 MR. RION: Objection.

3 THE COURT: Overruled.

4 A I believe it was seventeen grams, or close to that.

5 Q Okay. Now, all of these items that you've talked about and you've just  
6 mentioned during the search warrants that were located, did you, of any of  
7 the items, did you physically pick those items up and collect them? By collect  
8 them I mean pick them up and put them into an evidence bag. Did you do  
9 that at all?

10 A Not any of those items; no.

11 Q Okay. We've seen a picture of you holding what looks to be like a gun  
12 case.

13 A That's my finger.

14 Q Okay. Was there a gun in that case? Well, let me ask you this - did  
15 you find that gun case, or did you see it?

16 A I don't recall who found it.

17 Q Okay.

18 A And I'll say that I never wore gloves during the entire search.

19 Q Okay.

20 A Again, I was doing a lot of other things.

21 Q Okay. Not collecting the evidence, as you've stated?

22 A No. But, I did touch that gun case.

23 Q Okay. Was there --

1 A I wanted --

2 Q Well, hang on. At any time during the search warrant, or any time, did  
3 you learn whether or not there was a gun in that case?

4 A No.

5 Q There was not a gun in that case, or you did not learn about it?

6 A I just opened it so I could have a picture of it to illustrate there wasn't a  
7 gun in it.

8 Q Okay.

9 A It didn't have any evidentiary value, in my opinion, at that point.

10 Q Okay. During the course of your investigation did it ever become of  
11 any evidentiary value?

12 A No.

13 Q Okay. Now we're at the search and items have been collected. I think  
14 you mentioned, well, was it at or during this search that the defendant was  
15 arrested?

16 A I guess I would term it the time between the two search warrants.

17 Q Okay. Sometime after the guns were found?

18 A Yea.

19 Q Okay.

20 A Once the guns were found we obviously had probable cause to make  
21 an arrest.

22 Q For what charge?

23 A Weapons Under Disability.



1 Q Okay. Not the homicide?

2 A No.

3 Q Did you - you mentioned the car was impounded, the defendant's car,  
4 going back to that now and the stop. I'm going to show you what has been  
5 marked as State's exhibits '153', '154', '155', and '156'. We'll start with them.

6 MR. MILLER: Your Honor, may I approach  
7 the witness?

8 THE COURT: Yes.

9 Q Sir, I'm going to ask you to take a look at those exhibits and just let me  
10 know when you're finished.

11 (WHEREUPON, witness reviewed exhibits.)

12 A Go ahead.

13 Q Starting with State's exhibit '153' -- State's exhibit '153'. What are we  
14 looking at in State's exhibit '153'?

15 A '153' is the front of Mr. Carter's '96 black Ford Explorer bearing I think  
16 it's Charles Frank 88 Henry Paul. That's police talk for the letters. I think  
17 that's what it is.

18 Q Where are you getting those letters?

19 A What do you mean? Oh, those are the letters of the front plate. That  
20 would have been the plate that I had turned around and seen and thought,  
21 well, that's not the plate they gave me.

22 Q Okay. Now, do you know where this was taken?

23 A That was taken in the garage at Army's Wrecking Service down on

1 St. Johns.

2 Q After the car was impounded?

3 A Yes.

4 Q Okay. Does that truly and accurately depict Mr. Carter's car at the time  
5 you seen it, prior to the stop, at 122 East Eureka?

6 A Yes.

7 Q State's exhibit '154'. Can you tell us what State's exhibit '154' is?

8 A That's the same vehicle, Mr. Carter's vehicle. That's just a picture of  
9 the back of it and a photograph displaying the other plate that was on the  
10 back. That's the plate that was originally given during the description and the  
11 plate that I think Lieutenant Leary was able to see when he passed by and  
12 identified Mr. Carter.

13 Q Okay. Again, was that taken at Army's?

14 A That picture was taken at Army's as well.

15 Q Does that picture truly and accurately depict the back end of Mr.  
16 Carter's car on February 23rd, 2009?

17 A Yes.

18 Q When you observed it at 122 East Eureka?

19 A Yes.

20 Q Now, just for clarification, on each of these pictures, and I'm going to  
21 show you State's exhibit '154', there is a date stamp on the bottom of that  
22 picture; correct?

23 A Yes.

1 Q And what is the date stamp on that?

2 A February 24th, 2009, the following day.

3 Q Okay. State's exhibit '155'. What are we looking at there, Detective  
4 Clark?

5 A That appears to be a photograph of the front interior of Mr. Carter's  
6 vehicle.

7 Q Okay. Does it truly and accurately depict Mr. Carter's -- you searched  
8 Mr. Carter's vehicle; correct? I believe you earlier testified --

9 A Well, I did an impound inventory.

10 Q Oh, okay. Okay. An impound inventory? Does that truly and  
11 accurately depict the interior of Mr. Carter's vehicle when you did the impound  
12 inventory?

13 A Yes.

14 Q Sorry. State's exhibit '156'. Do you know what is in State's exhibit  
15 '156'?

16 A That would be a key. It looks like a house key and a gas receipt.

17 Q Now, does that gas receipt have an address on it?

18 A It does.

19 Q And what's the address?

20 A 721 West North Street, Lima, Ohio.

21 Q Are you familiar with that location?

22 A I am.

23 Q Okay. Can you generally describe where that -- can you just describe

1 where that location is?

2 A That would be a gas station on the southwest corner of Metcalf and  
3 North. At that time it was a Clark station - no relation. At this time I think it's a  
4 Gold Star.

5 Q Okay. It's got a date on it; correct?

6 A February 23rd of '09, I believe.

7 Q Okay.

8 A I think that's an '09.

9 Q And a time?

10 A Seven fifty-four A.M.

11 Q Now, later in your investigation were you able to -- first of all, did you  
12 take note of this when it was collected?

13 A Yes.

14 Q Did you then follow up and confirm, or, try to confirm whether or not  
15 Mr. Carter was at that location at that date and time?

16 A Yes.

17 Q Okay. Were you able to confirm that, in fact, he was?

18 A Yes.

19 Q Now, during the course of the investigation was that vehicle processed  
20 for gunshot residue?

21 A Yes.

22 Q And were you made aware of the results of those tests during the  
23 course of this investigation?

1 A Yes.

2 Q And what were those results?

3 A Negative.

4 MR. MILLER: Can I have one second,  
5 your Honor?

6 THE COURT: Yes.

7 (WHEREUPON, Court went off the record briefly.)

8 Q Now, during the course of your investigation you mentioned and we've  
9 seen evidence that there were two firearms located, functional, or apparently  
10 functional firearms located in the house. Were those the only two firearms  
11 located in the house --

12 A Those were the --

13 Q -- at 122 East Eureka.

14 A Those were the only two firearms located at 122 East Eureka.

15 Q Okay. During the search warrant -- well, you mentioned two search  
16 warrants. Was there also a search warrant for computers obtained during the  
17 investigation?

18 A I believe that the second search warrant included those items.

19 Q Okay. Were computers taken from the home for analysis?

20 A Yes.

21 Q Okay. Now, did that analysis take awhile?

22 A Quite awhile.

23 Q Quite awhile? Now, we're through the search. During your

1 investigation did you continue, you know, after the search warrants to follow  
2 up on any information that came in about the case?

3 A Yes.

4 Q Okay. Did you continue to follow up on potential suspects?

5 A I followed up on anything that -- I mean, to answer the question about  
6 potential suspects, we followed up on a variety of different people at different  
7 points and time.

8 Q Okay. When you followed up on those different people was there  
9 anything that came about during the course of the investigation, during that  
10 period, that led you to believe that there was any other suspects responsible,  
11 or, who could be responsible for this homicide?

12 MR. RION: Objection.

13 THE COURT: Overruled.

14 A No.

15 Q Was this case every officially closed at any point and time during the  
16 investigation?

17 A No. I can elaborate on that, if you would like.

18 Q Please do.

19 A I mean, this is six years down the line now. Early on, after the initial  
20 days of the investigation, I was working with another prosecutor who is no  
21 longer here and the decision was made, at least at some point, to follow and  
22 pursue the drug and weapons charges. There was also a companion case  
23 that resulted from the investigation. Basically I was told to, you know, keep

1 the case open and see what you can find out, but, you know, there wasn't a  
2 lot of excitement back then to move forward with an indictment.

3 Q Okay. Was that -- okay, by excitement, do you mean --

4 A I think -- well, they told me that --

5 MR. RION: Objection to what the  
6 prosecutors would have told him.

7 THE COURT: I'll sustain that.

8 MR. MILLER: Yea. We won't get into that.

9 Q Okay. Well, during this period of time, you know, the search warrants,  
10 and I just want to get a time frame, the search warrants are done and you've  
11 sent some stuff off to the lab in terms of the Glock and so forth, did you  
12 periodically review this case?

13 A Yea. I mean, at least once a year or so.

14 Q Okay. And as information came in you followed up on that information,  
15 or did you not?

16 A No, we always followed up on anything that came in.

17 Q Okay. Now, during this period of time, well, I guess as time went on  
18 where was Mr. Carter?

19 A He was eventually in prison.

20 Q Okay. Is that in reference to the Weapons Under Disability charge?

21 A And a couple of other charges.

22 Q Okay. At some point did you get some fresh information about the  
23 camouflage clothing, in particular, and the gloves?

1 A Yes.

2 Q Okay. What was that information that you received?

3 A To step back for a second, as I had said, initially he was convicted on  
4 several other charges and was going to prison. The thought process was at  
5 that point to, well, 'let's hold off on anything else and see what happens'. At  
6 some point and time Mr. Carter was eventually released from prison.

7 Q Did you get some information about the clothes?

8 A Well, I guess my point is, you know, I had other people look at the  
9 case. You know, when you look at the same case over and over again year  
10 after year after year you miss things. I showed people the case and had  
11 other people look at it. Eventually we found that there had never been any  
12 G.S.R. testing done on some of the clothing and the gloves.

13 Q Okay.

14 A And the car as well.

15 Q And was that done?

16 A We did have that eventually done.

17 Q Okay. Is that when you got the positive test results that have already  
18 been testified to? Was it eventually tested?

19 A Well, the items from the car were negative. The clothing --

20 Q I'm talking about the clothes.

21 A Some of the clothing was positive.

22 Q Okay. Now, eventually Mr. Carter got out of prison. What did you do  
23 at that point?



1 A Well, I started, -- you know, again, he was out of prison. The thought  
2 occurred to me that, you know, he had talked about it before to others.

3 Q Meaning who?

4 A Joey Moore.

5 Q Okay.

6 A The thought occurred to me that, well, here he's been in prison now for  
7 four years basically and I thought I would give the prison a call and see if I  
8 could speak to an investigator and maybe have that investigator interview cell  
9 mates is what I was looking at at that point. I thought that would be the best  
10 place to start. So, I made contact with the prison and was put in touch with  
11 Sergeant Smith. I basically explained to him that I was investigating a  
12 homicide that involved Markelus Carter and that he had been a prisoner there  
13 at one point and time - an inmate. Sergeant Smith remembered him. I said,  
14 "Basically there was a homicide involving the boyfriend of Mr. Carter's  
15 children's mother." I said, "Can you just kind of poke around with his old cell  
16 mates, if you can find any, and see if he ever talked about anything like that?"

17 Q And did you learn that somebody, in fact, had information in that  
18 regard?

19 A Well, he compiled a report on the entire thing.

20 Q Was Stephen Upham one of those individuals that you learned about?

21 A Yes.

22 Q Okay. So, now you have information that Stephen Upham has  
23 provided and you've got some new information about gunshot residue?

1 A Yes.

2 Q Did those fill in some blanks?

3 A Yes. Now the case was getting --

4 MR. RION: Objection to his opinion about  
5 this.

6 THE COURT: I'll overrule it and allow him  
7 to testify. Go ahead.

8 Q Go ahead, Tim.

9 A Well, I mean, you know, we found G.S.R. We had a person telling us  
10 that he got information from Carter that I felt --

11 MR. RION: Objection to his --

12 THE COURT: Overruled. Go ahead.

13 A Mr. Upham couldn't have gotten the information that he had without  
14 hearing it from Mr. Carter firsthand.

15 MR. RION: Objection.

16 THE COURT: There was an objection.  
17 The objection is overruled.

18 Q Go ahead.

19 A Can you ask me another question? I felt with the G.S.R. having come  
20 back as there being positive tests, and with what Mr. Upham said, then I  
21 began preparing to pursue an indictment.

22 Q Okay. Did you promise anything to Joey Moore or Stephen Upham in  
23 exchange for their testimony?

1 A No, sir.

2 Q Okay.

3 A I don't think I could do anything for Mr. Upham if I wanted to.

4 Q Okay. Why is that?

5 A He's in prison. He's got charges from another county. Honestly, this  
6 idea that we can help people get out of their cases is not the way it's often  
7 portrayed.

8 Q Okay. So, during the course of this investigation, you know, we've  
9 heard a lot of testimony and we have your testimony now, but during that  
10 entire period, during that entire period were there any other suspects that you  
11 came upon that supported an indictment against?

12 A No.

13 Q Okay. I want to go back to a State's exhibit. I know we're going to  
14 bounce around a little bit. State's exhibit '150'. I'll just hold it up here. I'll try  
15 to talk into that microphone the best I can. I'll tell you what - I'll just move  
16 here.

17 A Can you put it over here maybe?

18 Q Do you want it over there?

19 A Well, I can use the mic. here.

20 MR. MILLER: Okay. Is that okay, Judge?

21 THE COURT: That's fine. It's important  
22 that the jurors see it.

23 MR. MILLER: Okay. With the Court's

1 permission, I'm going to have Detective Clark step down here.

2 THE COURT: That's fine.

3 Q Again, State's exhibit '150'. Early in your testimony you marked 436  
4 McKibben. There's also an 'X' here that was put there by a previous witness.  
5 Can you -- well, do you know where 438 Pearl is?

6 A Yes.

7 Q Okay. Can you put a circle around 438 Pearl Street?

8 MRS. KOHLRIESER: I think you want  
9 448.

10 MR. MILLER: Oh, 448.

11 A Are you talking about Miss Johnson's house?

12 Q Yea, Miss Johnson's house.

13 A I believe here is Miss Burkholder's house. Here is the alley that runs  
14 between McKibben and Pearl. Just off the alley would be where Rosalind  
15 Johnson was at when she looked out her front window. I believe this 'X' here  
16 is where the trash hauler said he was when he heard shots.

17 Q Okay. Now, there seems to be behind 436 an empty lot, or a vacant  
18 lot. There's a vacant lot. Do you see that?

19 A Yes, sir.

20 Q Was that vacant back on February 23rd of 2009?

21 A No, it wasn't. There was a house that sat directly on that corner, which  
22 I think burned down in 2011.

23 Q Okay.

1 A So, you would have only had limited -- you wouldn't have been able to  
2 see the entire alley. You would have only been able to see the mouth of the  
3 alley in regards to someone having come out of the alley.

4 Q From where?

5 A From where Miss Johnson was located.

6 Q And that was going to be the question - even with a house on what is  
7 now a vacant lot, and you're familiar with this, you walked the scene, could  
8 you see from Miss Johnson's house the intersection of the alley that runs  
9 between McKibben and Pearl right next to 436 East McKibben? Could you  
10 see the intersection of that alley and Pearl Street from Miss Johnson's  
11 house?

12 A I was actually in Miss Johnson's home in the days after all of this and  
13 looking out her window. Again, the house was a pretty large two story home.  
14 The house was a pretty large two story home. From my vantage point at Miss  
15 Johnson's house, looking through that window, I could see the mouth of the  
16 alley.

17 Q Thank you. Go ahead. I'll take it. You can have a seat. I asked you  
18 to do this earlier. Can you just mark Miss Johnson's house, as you recall it,  
19 with a circle?

20 (WHEREUPON, witness marked exhibit.)

21 MR. MILLER: Can I have one second,  
22 your Honor?

23 THE COURT: Sure.

1 MR. MILLER: I think I'm pretty close here.

2 (WHEREUPON, Court went off the record briefly.)

3 Q All right. I have a few more things. During the course of your  
4 investigation did you monitor any social media websites for information  
5 relating to this particular incident?

6 A Yes.

7 Q Okay. Is that customary nowadays?

8 A It is today. It was kind of new back then.

9 Q Okay. I'm going to hand you what's been marked as State's exhibit  
10 '168'. Do you recognize that document?

11 A I do.

12 Q What is that?

13 A This would be a -- well, I printed this off of what I believed to be  
14 Markelus Carter's MySpace page, which to best describe it in 2009 would be  
15 the equivalent of Facebook today.

16 Q Okay. Now, is there a last log-in date on that?

17 A Yes, 2-23 of 2009, which would have been the day of the murder.

18 Q Okay. Right underneath his picture it says what?

19 A On the MySpace pages back then it allowed you to post basically what  
20 your mood was that day. In this picture his mood was determined.

21 Q Now, you testified earlier that Mr. Carter had been arrested at a certain  
22 time on February 23rd of 2009.

23 A Correct.

1 Q When was he -- well, was he arrested on February 23rd, 2009?

2 A Well, I don't have the exact time in front of me, but it was well after  
3 noon. It was after twelve o'clock because we started the first search warrant  
4 at around noon and he was arrested, you know, in an hour or so after that.

5 Q To your knowledge, did Mr. Carter return to 122 East Eureka on  
6 2-23-2009, not afterwards, but just on that date?

7 A To my knowledge he would not have been able -- well, he would not  
8 have been able to return there after when I first saw him that morning out on  
9 the street.

10 Q I'm going to hand you what has been marked as State's exhibit '152'.  
11 Do you recognize State's exhibit '152'?

12 A Yes.

13 Q What is that?

14 A It's the gas receipt from Mr. Carter's vehicle from the Clark gas station.

15 Q Okay. The one that we saw a picture of?

16 A Yea.

17 Q Now, are you familiar with the area of East Eureka in Lima?

18 A Yes.

19 Q And are you familiar with the area of 436 McKibben in Lima?

20 A Yes.

21 Q And are you familiar with the area between those locations?

22 A Yes.

23 Q I'm going to hand you what's been marked as State's exhibit '151'.

1 THE COURT: Excuse me. What number?

2 MR. MILLER: '151'.

3 THE COURT: Oh, okay.

4 Q Can you tell the jury what '151' appears to be to you?

5 A Well, it's obviously a printed global map that encompasses both  
6 McKibben and Eureka.

7 Q Okay. You've been a Lima Police Department officer for how many  
8 years?

9 A Twenty-nine.

10 Q Are you familiar with this area of Lima?

11 A I worked that area for many years.

12 Q Can you take a marker and, well, if you were going to travel from --  
13 well, first of all, I would like you to mark the one hundred block of East  
14 Eureka. The one hundred block of East Eureka.

15 (WHEREUPON, witness marked exhibit.)

16 A That dot there I think would be in close proximity to Mr. Carter's home.

17 Q And that dot you placed at the bottom of the map?

18 A Yes.

19 Q Now, the four hundred block of East McKibben Street.

20 (WHEREUPON, witness marked exhibit.)

21 A I've placed a dot that would be in close proximity to Miss Burkholder's  
22 home at the time.

23 Q Okay. Now, can you draw, if you can, what your experience to be as



1 the most direct route between the two dots?

2 A Well, do you want me to draw it from McKibben Street, leaving --

3 Q From McKibben to Eureka.

4 A Well, I would likely go from McKibben, westbound to Jackson, and then

5 I would likely take Jackson down to Market. Now, I don't recall at the time if

6 Elm Street was two way. I think Elm Street was still one way going west, or,

7 going east. So, today if I was doing it I could come straight down --

8 (WHEREUPON, witness marked exhibit.)

9 Q Well, let's place it back in time.

10 A I would assume --

11 Q Let me correct my question. Let's go back to February 23rd of 2009.

12 What would be the most direct route?

13 A Well, I mean, I would suggest that you would cut over to Pine Street,

14 either on Market or Elm, and then take Pine. Or, you could cut over to

15 Central. Basically that block that Mr. Carter lives in runs between Central and

16 Main. But, you could come down Pine Street and turn on Eureka, or you

17 could come down Central and turn on Eureka. So, it would have been from

18 Central or --

19 Q Well, just go ahead and complete the drawing. Okay. So, it would

20 look something like that; correct?

21 A Yes.

22 Q Okay. Now, along those same lines, we'll make just a little bit of a

23 record here, have you had the opportunity to here recently travel from the

1 Husky Refinery to 436 East McKibben?

2 A Yes.

3 Q Okay. Do you recall how long that took you?

4 A I want to -- I think it was in the vicinity of, like, --

5 Q Do you recall specifically?

6 A I don't recall exactly.

7 Q Okay.

8 A I did make notes, though, of those trips.

9 Q Okay. Did you make notes of certain trips?

10 A I did.

11 Q Would referring to those notes help refresh your recollection as to the  
12 timing of the trips?

13 A Yes.

14 Q Do you recognize that document?

15 A These are my -- this is my chart that I made of all of the trips that I did.

16 Q Okay. I'll put it up here so everyone can see.

17 A Oh, okay. I won't need my glasses then.

18 Q Okay. All right. The first location is the -- the first column talks about  
19 locations and then the second column is miles and the next column, the final  
20 column on the right, is time. Did you drive between Husky and 436 East  
21 McKibben?

22 A Yea.

23 Q Okay. And how long did it take you?

1 A Well, the first thing I would like to say is that these times would not be  
2 exact. It would depend on the traffic. I did most of these during the middle of  
3 the afternoon. So, you're going to have more traffic, more than likely, at that  
4 time of day than you would maybe in the early morning or the late evening  
5 hours. Then there's also some variables with catching traffic signals and  
6 things of that nature. So, my point is, where you see Husky Refinery to 436  
7 East McKibben, well, I did it in eight minutes and thirty-five seconds. But, it  
8 could be a little more or a little less.

9 Q Okay. And then the area of 448/447 East Pearl Street to 436 East  
10 McKibben?

11 A Okay. That would be -- well, just to go back to the first one, Husky  
12 Refinery to 436 East McKibben. That's obviously from where Mr. Warrington  
13 left that morning at work to Sonya Burkholder's home. The second location,  
14 447 East Pearl to 436 East McKibben, and that's basically a little under a  
15 quarter of a mile, was around forty seconds. That would be the time from,  
16 well, I think Don Hovest driving the garbage truck where he left the Pearl  
17 Street address and went down to Liberty and then came back up on  
18 McKibben. That would have been the time from where he started to basically  
19 passing Miss Burkholder's home.

20 Q Okay. And the next one down is 447 East Pearl Street to the Clark  
21 Station. Which Clark Station is that?

22 A Now, that Clark Station should not be confused with the Clark Station  
23 at Metcalf and North. That Clark Station is, well, if you turn off of McKibben

1 and go north on Jefferson and up around the corner, and you know where  
2 Schoonover Park and pool are, well, I don't know if it's still a Clark Station  
3 today, but there's a gas station there that used to be a Clark Station and that  
4 would be where Mr. Hovest called in the shots fired call. As you can see, it's  
5 three-quarters of a mile basically, and just under two minutes for him to get to  
6 that point.

7 Q Okay. 436 East McKibben to 122 East Eureka Street.

8 A That would be the time it took me to drive from Sonya Burkholder's  
9 home to Mr. Carter's home. Again, it's a little over a mile now and a quarter  
10 and right around four minutes and fifteen seconds driving.

11 Q Okay. And 122 East Eureka Street to Lima Central Catholic.

12 A Yea, the significance of that is, you know, Mr. Carter had indicated that  
13 morning that he took his son, Markie, to school. So, I just wanted to  
14 document the route from Eureka to L.C.C. The route that I took was a little  
15 over two and a half miles and a little over six minutes. Again, those variables  
16 with traffic and things could make it a little more or a little less.

17 Q Okay. Then the next entry there?

18 A Then, having the information that Mr. Carter was at the gas station at  
19 North and Metcalf, I would presume after having dropped off Markie at L.C.C.,  
20 I went ahead and got the distance from L.C.C. to that gas station. Again, it's  
21 two point six miles and a little over six minutes to make that kind of indirect  
22 route. There's not a really straight route from L.C.C. to that area. But, it was  
23 around six minutes.

1 Q Okay.

2 MR. MILLER: Your Honor, may I have one  
3 minute?

4 THE COURT: Sure.

5 (WHEREUPON, Court went off the record briefly.)

6 Q Detective Clark, did you also walk the alley that we've talked about, the  
7 one between McKibben and Pearl and along 436? It runs right along 436  
8 East McKibben.

9 A Yes.

10 Q Okay. Do you recall how long it took you to walk that?

11 A I walked it twice, actually.

12 Q Okay. You walked it twice? Okay.

13 A I walked it from the side of Sonya's home, the alley side, in the alley,  
14 not up next to the house, but the alley next to Sonya Burkholder's house, the  
15 side door there. I walked that to the mouth of the alley in kind of a leisurely  
16 pace. That was a little over forty seconds to do that. Not in a hurry - just  
17 walking along. It was like forty-three seconds. Then I did the same thing  
18 trying to be a little more hurried without actually running and I did it in like  
19 twenty-three seconds.

20 Q Okay. Did you run it?

21 A No. No, I didn't.

22 Q All right. Now, back to this clothing that was collected at 122 East  
23 Eureka Street during the search warrants. I'm going to hand you just for

1 reference sake State's exhibit '130'. The bag is already opened. Can you  
2 see the pattern of camouflage on State's exhibit '130' without me taking it all  
3 the way out?

4 A Yes.

5 Q Okay. Now, was there actually other type, another type of camouflage,  
6 collected at 122 East Eureka Street other than the pattern that's depicted on  
7 State's exhibit '130'?

8 A Yes.

9 Q Okay. Are you aware of whether or not that camouflage, the other type  
10 of camouflage, was sent off for gunshot residue testing?

11 A Yes.

12 Q Are you aware of the results?

13 A Negative.

14 Q Okay. Are you aware of the results?

15 A Oh.

16 MR. RION: I guess I'm going to -- well, I'll  
17 withdraw the objection.

18 THE COURT: Okay.

19 Q Are you aware of the results?

20 MR. RION: No, I guess I am going to  
21 object. If there's going to be an expert -- I mean, he's talking about results of  
22 a scientific test. If we're going to get into it I would like to have the scientist  
23 here to testify about it.

1 MRS. KOHLRIESER: Your Honor, can we  
2 approach just a moment?

3 THE COURT: Sure. You can approach.  
4 (WHEREUPON, Court and counsel had a brief discussion at the Bench, on  
5 the record, as follows.)

6 MRS. KOHLRIESER: Your Honor, as we  
7 have with some other things and what we've talked to Mr. Rion about earlier  
8 was that we are having Tim testify to all the negatives so that he's not having  
9 to call the B.C.I. experts. Again, I think Daniel Davison's report was put into -

10 MR. MILLER: Plus, more to the point, it's  
11 just relaying what he learned during the course of his investigation. That's it.

12 MRS. KOHLRIESER: It's Matt Congleton's  
13 report that Congleton testified to.

14 THE COURT: (Inaudible).

15 MR. MILLER: Really what we're talking  
16 about in terms of camouflage this and camouflage that so that there's no  
17 confusion. There was other pictures of camouflage with different patterns. I  
18 was just trying to clear it up so there's no confusion. That's it.

19 MR. RION: I just don't know where they're  
20 going with it now with these experts. The last expert went in a direction that I  
21 wasn't anticipating. I'm a little gun shy right now.

22 THE COURT: Well, he's not giving any  
23 more expert testimony.

1 MR. MILLER: Who?

2 THE COURT: Clark.

3 MRS. KOHLRIESER: In Congleton's  
4 report he tested both kinds of --

5 MR. RION: If Congleton testified to it then  
6 this officer doesn't need to.

7 THE COURT: The objection is overruled.  
8 Go ahead.

9 (WHEREUPON, Court continued on the record, as follows.)

10 Q Okay. Detective Clark, back to the question. Are you aware that there  
11 was a different pattern of clothing collected at the scene at 122 East Eureka  
12 that had a different pattern of camouflage on it than what is depicted in  
13 State's exhibit '130'?

14 A Yes.

15 Q Are you aware that that clothing was sent off for testing for gunshot  
16 residue?

17 A Yes.

18 Q And are you aware of the results?

19 A Yes.

20 Q What were those results?

21 A Negative.

22 Q Okay. At the traffic stop did the defendant ever ask you who the victim  
23 was?



1 A No.

2 Q Now, did you tell Joey Moore that you didn't have time for his F-5's  
3 during your interview?

4 A Probably.

5 Q What did you mean by that?

6 A I wasn't going to mess with it. He was going to tell me what he was  
7 going to tell me or he wasn't.

8 Q You heard Carlotta Williams testify here in this case. How did you  
9 come upon her name during the course of your investigation?

10 A Through Joey Moore.

11 MR. MILLER: One second, your Honor.

12 (WHEREUPON, Court went off the record briefly.)

13 Q During the course of this investigation did you monitor news reports?

14 A Yes.

15 Q Such as what would be written in the newspaper?

16 A Yes.

17 Q Do you recall if any of the details -- well, let me ask you this - are you  
18 aware of any news report that covered this particular homicide?

19 A Yes.

20 Q Okay. Of the news reports that you're aware of were any of the  
21 investigative details given in those news reports?

22 MR. RION: Objection.

23 THE COURT: Overruled.

1 A There were no details involving stalking, or camouflage, or paintball  
2 masks, things of that nature in any newspaper reports.

3 Q To the best of your recollection, you know, what was revealed?

4 MR. RION: Objection.

5 THE COURT: Overruled.

6 A To the best of my recollection, names, dates, places.

7 Q That's it?

8 A Just general news filling information.

9 Q During the course of investigations is it a matter of course for  
10 detectives to give out details of a pending investigation to the news media?

11 A That wouldn't be helpful.

12 Q In what way?

13 A Well, I mean, it's apparently clear in a case like this if you had given  
14 out those details then certain things that witnesses tell you wouldn't be  
15 relevant because what makes it relevant is the only way they could know  
16 certain details is in a certain way.

17 Q Okay.

18 MR. MILLER: One second, your Honor?  
19 We're getting there.

20 THE COURT: Okay. Time's up. You said  
21 one second.

22 MR. MILLER: Maybe a little bit longer?

23 (WHEREUPON, Court went off the record briefly.)

1 Q Along the same lines as the last question, does the Lima Police  
2 Department release in any public way investigative reports during the  
3 pendency of an investigation?

4 A I don't believe that occurs until after a person is indicted.

5 Q Okay.

6 A And that wouldn't be to the news media, I don't think.

7 Q Okay.

8 MR. MILLER: One more second, your  
9 Honor.

10 MRS. KOHLRIESER: Sorry.  
11 (WHEREUPON, Court went off the record briefly.)

12 Q Do you know the year that this defendant was indicted?

13 MR. RION: In which case?

14 Q In this case.

15 A I think it was 2014.

16 Q Okay.

17 A I think. I'm not positive.

18 Q Okay. Was that before or after you spoke to Mr. Upham?

19 A It would have been after, several months after.

20 MR MILLER: No further questions.

21 THE COURT: All right.

22 MR. RION: May we approach, your  
23 Honor?

1 THE COURT: If you're asking about time?

2 MR. RION: Yea.

3 THE COURT: Yea, I'm planning on going  
4 until four-thirty. I'll give you a full opportunity to cross examine. Let's get in  
5 what we can get in between now and four-thirty and then if you need to  
6 continue tomorrow we can continue tomorrow with that.

7 MR. RION: I just didn't want to break in  
8 the middle of cross. That's all.

9 THE COURT: Well, I want to keep trying  
10 to move on here. So, we'll see where we're at at four-thirty. If you have a lot  
11 more we'll break. If you don't think you have a lot more, if the jury can stand  
12 to be here for awhile, we'll keep going. Okay?

13 **CROSS EXAMINATION**

14 **BY MR. RION:**

15 Q Sir, let's start with that last question. You said after an indictment is  
16 issued then the policy is that information can become public in the case. Is  
17 that what you testified to?

18 A I don't know that policy is the right word. It's my understanding that  
19 once a person is indicted they have entitlement to discovery and so those  
20 items would be released through discovery.

21 Q Now, when was the indictment on the Weapons Under Disability?

22 A That would have been in 2009.

23 Q 2009? Okay. So, information relating to this case was released at

1 that time; correct?

2 A Certain information.

3 Q Right. And a Grand Jury -- an indictment was sought in this case, this  
4 Murder case, in 2010; correct?

5 A No, I don't think so.

6 Q No? There weren't Grand Jury subpoenas issued and a Grand Jury  
7 held?

8 A I don't recall seeking an indictment in 2010 for this.

9 Q Okay. In 2010? Okay. Now, let's go through the investigation for a  
10 minute. What other search warrants were issued for anyone else's house in  
11 this case except for Mr. Carter's?

12 A None.

13 Q Okay. What other houses were searched in the way that a search is  
14 completed in this case except for Mr. Carter's?

15 A Well, you have to have probable cause for a search warrant.

16 Q I'm sorry? If you would just answer my question? You can get  
17 permission to search a house, too; correct?

18 A I suppose; yea.

19 Q Okay. So, you don't have to have probable cause. You can have  
20 someone's permission to search a house. The question is --

21 A No. No, is the answer to that question then.

22 Q To which question?

23 A Did I search anybody else's house.

1 Q Okay. Or did any other officer that you're aware of conduct a thorough  
2 search of any other house except for Mr. Carter's house?

3 A No.

4 Q Okay. Now, Mr. Carter was arrested on February 23rd, 2009; correct?

5 A Yes.

6 Q On February 25th, 2009 did you receive a letter? Did the Lima Police  
7 Department receive a letter? I'll mark it as defense exhibit 'JJ'.

8 THE COURT: 'JJ'?

9 MR. RION: Yes.

10 THE COURT: Okay.

11 Q Now, what is Defendant's exhibit 'JJ'?

12 A It is a letter.

13 Q Okay. Who is it addressed to?

14 A The Lima Police Department.

15 Q And was that received by the Lima Police Department?

16 A I would assume so.

17 Q And I'll show it to the jury. You've reviewed this letter before today;  
18 correct?

19 A I mean, I'm sure I read it before at some point and time. Not recently.

20 Q Well, it went through the mail; correct?

21 A Yes.

22 Q Were you able to determine what mailbox it was mailed from?

23 A No.

1 Q Did you ever determine what post office it was processed through?

2 A No.

3 Q Did you ever check the tracking numbers to determine any information  
4 about this?

5 A Where's that?

6 Q This information here. Do you see there's some codes, bar codes  
7 there?

8 A Yea. Okay.

9 Q Did you check any of that to see where it came from?

10 A Yea, I don't know what that is.

11 Q It reads - "In the Ken Warrington murder," -- this is two days, someone  
12 mailed this while he was in prison; correct, or while he was in jail?

13 A While he was in jail for Weapons Under Disability.

14 Q Right.

15 A Yea.

16 Q And it's typed; correct?

17 A Apparently. It appears to be.

18 Q "In the Ken Warrington murder you should be taking a real strong look  
19 at his wife, Faye." It goes on and on and on to talk about that. It's sort of an  
20 odd letter to just receive; correct?

21 A Yes, I would say that. That's fair.

22 Q Did you ever compare -- now, the handwriting on the letter itself is in  
23 person; right? It's not typed; correct?

1 A That's correct.

2 Q Did you ever compare that handwriting to any other people's  
3 handwriting?

4 A No.

5 Q Okay. Did you ever compare, for example, the L in Lima with the L on  
6 a license plate magnet that was put on Ken Warrington's car?

7 A I didn't do any handwriting comparisons.

8 Q Do you recall that there was a word, and the word was asshole,  
9 number one asshole, that was put on Ken Warrington's vehicle; correct?

10 A Yes.

11 Q Shortly before the murder; correct?

12 A I think that we heard that it was a week or so before that.

13 Q Okay. So, shortly before --

14 A So actually, anywhere, yea, a week.

15 Q Shortly before the murder?

16 A Okay. Uh-huh.

17 Q Okay. No comparisons? This was just filed away, this letter?

18 A Yes.

19 Q Not compared with anything? Did you ever try to take any fingerprints  
20 off of it?

21 A Off of?

22 Q Off of the letter.

23 A I didn't.



1 Q Was it sent for fingerprint comparison?

2 A Not to my knowledge.

3 Q Was it sent for DNA analysis?

4 A No.

5 Q For touch DNA?

6 A It went through the mail.

7 Q The letter -- this letter was inside this envelope; correct?

8 A Yes.

9 Q Was it checked for touch DNA?

10 A Not to my knowledge.

11 Q You spoke with Sonya Burkholder. Did you ever write a written report  
12 as to what she said happened that morning?

13 A I wrote several reports. They were generally summaries of what  
14 happened.

15 Q Okay. I know you wrote several reports. Did you write a report as to  
16 what Sonya Burkholder told you happened in the early morning hours of  
17 February 23rd?

18 A Yea. I believe you have a report in front of you that's a summary of  
19 what she told me.

20 Q Okay. Actually I'll show you what I have. My question is - as it relates  
21 to the morning hours of February 23rd did you ever write a report as to what  
22 she told you occurred?

23 A Well, this is kind of a report that details some of that.

1 Q Does it talk about what she says happened in the early morning hours  
2 of February 23rd? I'm not trying to be argumentative.

3 A No. I'm just trying to understand what you --

4 Q Did you write a report about what Sonya told you about what happened  
5 in the morning hours of February 23rd?

6 A I did not write a report about that, about that specific conversation.  
7 That would have been Detective Kleman when he spoke to her that morning.

8 Q Are you aware -- you've reviewed the discovery in this case; have you  
9 not?

10 A I have.

11 Q And are you aware of any report from any officer, a written report, that  
12 deals with what Sonya told them occurred in the morning hours of that day?

13 A Yea. It came to my attention later on that --

14 Q Detective? Sorry. Is that a 'yes' or a 'no'?

15 A Ask the question again. I'm sorry.

16 Q Are you aware of a written report by any officer that deals with what  
17 Sonya Burkholder allegedly said, if at all, as it relates to the events of the  
18 morning hours of February 23rd?

19 A What you have in front of you is what she told me. To answer your  
20 question, I guess that would be a 'no'.

21 Q So, you have a person at your -- well, at the time on February 23rd  
22 when you're poking through her house and then you leave were you aware  
23 that she had received a conceal and carry permit within months of this?

1 A I wouldn't have known that that morning.

2 Q Now, when you interviewed her two days later on February 25th she's  
3 describing her relationship with Ken Warrington; correct?

4 A Yes.

5 Q You heard her testify the other day in Court; correct?

6 A Yes.

7 Q Did she tell you that she had been seeing Ken for about a year prior to  
8 moving in, well, of him moving in with her?

9 A I think that's what I wrote in my report.

10 Q He moved in with her in November of 2008; correct?

11 A Yes.

12 Q Did she tell you that?

13 A I believe so.

14 Q Did she tell you that she was in love with Ken?

15 A At one point and time I'm sure she did if that's what I wrote.

16 Q Do you need --

17 A No. I've seen it. That's what I wrote.

18 Q No, no. I don't want to play words here. This isn't a question about at  
19 one point and time.

20 A Well, I mean, --

21 Q On February 25th, 2009 did she tell you that she was in love with Ken  
22 Warrington?

23 A Yea. Yea.

1 Q And she had not been seeing any other man during the course of her  
2 relationship with Ken Warrington; correct?

3 A That's what she said.

4 Q Okay. Now, obviously at that time you didn't have her testimony that  
5 she made on the stand just last week; correct?

6 A No.

7 Q Okay. You inquired as part of your investigation as to other  
8 relationships she may have had with other people; correct?

9 A Yes.

10 Q And you received information that there were multiple individuals that  
11 during this general time frame that she had had some type of sexual  
12 relationship with; correct?

13 A Well, that would be a yes or a no, depending on how I answer. I spoke  
14 with two people who had relationships with her.

15 Q I'm sorry. Let me rephrase the question. I'm really talking about out at  
16 the Refinery.

17 A There were two people over the course of many years that admitted to  
18 having a relationship with her.

19 Q Okay. My only point is, you were aware that there were other people  
20 that you had information on that had relationships with her other than Ken  
21 Warrington; correct?

22 A Other than, for sure; yes. Not necessarily during the same time frame.

23 Q Now, she, for instance, would have come to Agruello Harris -- you

1 received information about him; correct?

2 A Yes, an anonymous phone call.

3 Q An anonymous phone call?

4 A Actually it was an anonymous crime stopper's, I think. I'm not sure.

5 Q And you investigated?

6 A Yes.

7 Q And you received inconsistent information as it related to that; correct?

8 A Elaborate.

9 Q She told you one thing and he told you something else?

10 A She said that --

11 Q I don't -- I'm real sensitive to hearsay. I'm just saying that she said one  
12 thing and he said something else.

13 A For sure. Yes.

14 Q Okay. So, it appeared as if someone was not being honest with you in  
15 that conversation?

16 A Well, I had two different stories.

17 Q Right. Okay. Now, back in 2009, actually on the day this happened,  
18 Markelus informed detectives that he had gone to a gas station; correct?

19 A Yes.

20 Q And you searched his car and, in fact, you found a gas station receipt;  
21 correct?

22 A Yes.

23 Q He told you that he had taken Markie to school that day; correct?

1 A Not me. But, yes.

2 Q Investigators?

3 A Uh-huh.

4 Q You checked that out and, in fact, --

5 A Seven-thirty, I believe.

6 Q In fact, you checked with the school and, in fact, they confirmed that he  
7 did; correct?

8 A Yes.

9 Q You checked -- well, in the seat of the car did you find, I'm sorry, I don't  
10 have a big enough table here, did you find a set of proofs for Allstate  
11 Insurance?

12 A Yes.

13 Q I'll hand you what's been marked as Defendant's exhibit 'KK'. Does  
14 this appear to be a sample of the Allstate Insurance cards that appears as if  
15 Mr. Carter was, in fact, doing proofs for?

16 A Well, I mean, I don't know if these are the same ones, but I do  
17 remember such cards being in there that he was doing at the time for Mr.  
18 Bennett.

19 Q Okay.

20 A In fact, I believe that while I didn't take those cards from the vehicle  
21 during the impound I think I retrieved them for Mr. Bennett at some point and  
22 time and returned them.

23 Q Okay. So, you actually found the Allstate Insurance proofs or cards

1 that Mr. Carter --

2 A Sir, I think they're best described as, like, maybe like mock-ups or  
3 something.

4 Q Right. So, those were in the vehicle as described; correct?

5 A I believe so.

6 Q Now, were you able to ascertain the address of Mr. Bennett?

7 A I think it's 1701 West High Street.

8 Q And where is that in relation to where Mr. Carter's car was ultimately  
9 stopped? In proximity?

10 A I mean, I think that would be the sixteen hundred block of West Spring  
11 where he stopped and Mr. Bennett would be about one, two, two blocks to the  
12 north maybe.

13 Q Okay. If I told you that his address was 1601 West High --

14 A Okay.

15 Q -- does that change your opinion?

16 A I wouldn't dispute that; no.

17 Q Okay. So, the area where Mr. Carter was stopped was within a matter  
18 of blocks of Mr. Bennett's house?

19 A I think that would be like two blocks south.

20 Q Now, let's talk about, well, you testified during direct that during a case  
21 it's not wise to put information about the case out there because if you do so  
22 then when it boomerangs back in a different fashion that information may be  
23 worthless; correct?

1 A Yea.

2 Q Okay. So, you did a series of interviews with individuals in 2009;  
3 correct?

4 A Yes.

5 Q And you shared information about the case with these individuals that  
6 came from people other than those individuals; correct?

7 A You'd have to be more specific.

8 Q All right. Specifically, you read to Carlotta the actual statement of  
9 Rosalind Johnson; correct?

10 A After she brought up Rosalind Johnson.

11 Q I understand. But, you read it to her; correct?

12 A After she brought the name up; yes.

13 Q Okay. You told Joey Moore that you're looking for a gun; correct?

14 A Not the first time I spoke to him.

15 Q In 2009 --

16 A It was probably --

17 Q In 2009 -- in 2009 you told him that you were looking for a gun?

18 A I told him that we didn't have a gun.

19 Q Okay. From my notes, did you tell him that you were looking for a  
20 silver and black gun?

21 A I would say that I told him we were looking and heard about a black  
22 gun with a silver slide that we hadn't recovered. We hadn't recovered any  
23 murder weapon at that point.



1 Q I understand. So, through -- now Allen Correctional Institution is in  
2 this, well, it's close by; isn't it?

3 A It's in Allen County, which is where Lima is; yea.

4 Q Yea. How far away from here?

5 A From the Courthouse?

6 Q Sure.

7 A North of the city limits. It's straight up West Street.

8 Q Now, Carlotta Williams was dating a guy by the name of David Evans  
9 at the time that all this happened; correct?

10 A Yes.

11 Q And David Evans, in 2011, well, were you able to do some research to  
12 determine whether or not David Evans was in Allen Correctional for  
13 approximately a thirty day period in 2011?

14 A Yes.

15 Q So, if Carlotta, who is dating David Evans, repeats to David while  
16 they're in their own house at their kitchen table or waking up in the morning  
17 information that you shared with her and then David goes into the prison that  
18 information can flood those walls and become porous; correct?

19 A Is that inconceivable? No.

20 Q Okay.

21 A Not probable.

22 Q And Joey Moore is -- Joey Moore -- you talked to Joey Moore about a  
23 lot of different people's cases; correct?

1 A No.

2 Q Even in the tape you talked to him about multiple cases. When I say  
3 'you', I mean police officials.

4 A Oh, yea. If you could be a little more specific.

5 Q First of all, you spoke --

6 A Has Joey Moore ever talked to the police before? I'm sure he has. He  
7 had never talked to me.

8 Q Okay. And he even states in his statement how there's multiple kites  
9 that he put out on this murder, and that murder, and this investigation, and  
10 that investigation.

11 A Well, I don't know about this murder and that murder.

12 Q I can show you the tape to remind you if you don't recall.

13 A Well, we get -- I mean -- I guess I don't know. We get multiple kites.  
14 We get multiple kites, letters, notes, and phone calls every day.

15 Q My point is - every time Joey Moore seemed -- well, let me put it this  
16 way. He contacted multiple officers on multiple offenses as he heard about  
17 them. Is that a fair statement?

18 A Probably.

19 Q Or as he wanted to smoke a cigarette or whatever?

20 A I would assume so. Yea. A lot of guys do that. It's a good way to  
21 smoke.

22 Q And the veracity of the information depends on the person, I suppose?

23 A Uh-huh. It depends on what they say.

1 Q Right.

2 A And does it match up with things you already know.

3 Q If he's telling multiple officers multiple things who knows what he's  
4 telling multiple other people multiple things?

5 A I don't know that he was telling multiple officers anything at that point,  
6 other than me.

7 Q Do you recall -- did you watch his video in preparation for your  
8 testimony?

9 A I've watched his video. I haven't watched it in the last few weeks.

10 Q Do you recall him talking to you specifically about putting out kites for  
11 three completely unrelated cases with completely other individuals?

12 A Well, you characterized them initially as murders. I didn't recall that.  
13 But, maybe other cases.

14 Q Okay. When you talked to Mr. Upham you told him, you told him that  
15 Ken Warrington had been shot five times in the back. Those were your  
16 words; weren't they?

17 A Without seeing it here, I would say probably. That's fairly accurate.

18 Q Now, this is what I'm getting -- that's what's on tape. You spoke to a  
19 lot of people that weren't on tape; correct? In other words, you spoke to a lot  
20 of people and those conversations weren't recorded?

21 A Well, to make it --

22 Q Just 'yes' or 'no'.

23 A Okay. Yes.

1 Q You interviewed many people --

2 A I've interviewed people --

3 Q -- and those conversations aren't always recorded; correct?

4 A Conversations at the Police Department are generally recorded.

5 Conversations out on the street would not be.

6 Q So, you spoke to multiple people in situations where the conversation  
7 is not recorded; correct?

8 A Sure. Yea.

9 Q Okay. The license plate on Markelus' vehicle, the front license plate,  
10 was there damage to the front of the vehicle?

11 A I don't recall.

12 Q Did you attempt to try to remove the front license plate to see if it was  
13 removable?

14 A No.

15 Q State's exhibit '153'. Does it appear as if the front license plate is  
16 damaged? Maybe I can let you see the picture.

17 A Yea, that would probably be better. Yea, it's a little bit.

18 Q Now, you searched his car; correct?

19 A Impound inventory.

20 Q And in that impound inventory -- well, you also had somebody, or  
21 somebody in the investigation, then attempted to, well, first of all, you tried to,  
22 or, you checked to see if there were any blood stains on the vehicle; correct?

23 A Those things were done later on. That wasn't done with what I did. I

1 did the impound inventory on the street. It was taken to Army's and then it  
2 was processed later by someone else.

3 Q Okay. Who?

4 A I believe that would be B.C.I., Dave Hammond.

5 Q Okay. And Hammond was checking for any blood that could be in the  
6 car; correct?

7 A Well, I think, I mean, his protocol, I would assume, would be to check  
8 for any obvious evidence, or G.S.R., or anything like that.

9 Q Okay.

10 A Anything laying out that would be of evidentiary value that I didn't see  
11 in my cursory search.

12 Q Were you aware -- did anybody search the trash cans at Sonya's  
13 house?

14 A I did not.

15 Q You said you were at a dentist's office and you were watching who you  
16 later found out to be it was Markelus Carter?

17 A There's a dentist's office that sits on the northeast corner of Main and  
18 Eureka. It's called Burns Dentistry. I'm not sure if it was Burns at that time.

19 Q And about what time were you there? Between what time and what  
20 time?

21 A Well, I believe it was around eight A.M. when I found out from street  
22 officers that it didn't appear anyone was at home. I know that the traffic stop  
23 was conducted at like eight fifty-three. So, I'm guessing kind of on that time.

1 Q I guess my question was - what time were you out there?

2 A Well, my point is it would have been probably -- well, if the stop time on  
3 the traffic stop was eight fifty-three, which is what I think it was, but it may  
4 have been eight fifty-nine, I'm not sure, but it would have been within the  
5 preceding ten minutes. I wasn't there that long before he got in his car and  
6 pulled off, I guess is the point.

7 Q When you saw him he was fixing his car? He was working underneath  
8 his hood?

9 A I recall the hood of his vehicle being up.

10 Q And he was underneath it doing something?

11 A Well, he was around it.

12 Q Okay.

13 A I hadn't seen him come from his house. I didn't know if it was him,  
14 obviously, or not.

15 Q So, when you saw that person who you didn't know to be Markelus  
16 Carter nothing out of -- well, you didn't even realize that that was the  
17 individual that you were looking for; correct?

18 A I didn't know him.

19 Q And there was nothing about that behavior of that unknown person at  
20 that time that caused you any unusual response --

21 A Yea.

22 Q -- other than the guy was tinkering with something in his engine?

23 A I don't know what he was exactly doing.

1 Q But, it appeared to be normal to you; right?

2 A It didn't appear to be unnormal (sic).

3 Q Okay.

4 A I guess the right word would be abnormal.

5 Q So, that was about -- well, is it fair to say between eight-thirty and eight  
6 forty-five? Somewhere in that range?

7 A I would say more -- I mean, if the traffic stop was, again, I haven't seen  
8 my reports to see the exact time, but I think in my report or somewhere I  
9 wrote eight fifty-nine. But, I mean, I would say between eight forty-five, then,  
10 and the traffic stop, when it ended.

11 Q How long did you --

12 A It didn't take very long at all.

13 Q I understand. How long did you sit there and watch him for?

14 A I drove down the block and I saw the car sitting there. I don't know if I  
15 noticed the subject as I passed by. But, at some point as I'm turning around  
16 in the parking lot, I pulled in and turned around and pulled up to the street, I  
17 saw him standing there with the hood up.

18 Q Okay. How long were you there?

19 A Not very.

20 Q How long after that did the other officer come by?

21 A Not very. Again, the whole thing happened in probably, from start to  
22 finish, with finish being traffic stop and start being when Sergeant Leary came  
23 through and said 'that's him', fifteen minutes at the most.

1 Q Okay. And during that fifteen minutes the individual that you observed  
2 to be Markelus, well, you did not observe any odd behavior, any abnormal  
3 behavior, on his behalf?

4 A Yea, not at that point.

5 Q Okay. Now, when you pulled him over you said you asked him if he  
6 wanted to come down to talk to you at the Station; right?

7 A Well, I didn't pull him over and I don't know what was said before I got  
8 there, but --

9 Q When you're at the place of the stop and you're talking to him you say,  
10 'hey, I want you to come down to the Police Station', or something to that  
11 effect?

12 A I said that there was a shooting on McKibben. I was investigating a  
13 homicide and I would like for him to come down to the Station to talk. That  
14 was the general tone of what I said.

15 Q And he gave you zero resistance about -- in fact, he tried to get in your  
16 car even without your permission?

17 A Well, he -- he had an episode.

18 Q Did he give you any resistance to getting in your vehicle?

19 A No. No, no.

20 Q Okay. Then there was, well, was it a key to his car, or his wallet, or  
21 something that was left that he asked --

22 A Yea, I think his keys were in the ignition and maybe his wallet was  
23 laying on the front seat.



1 Q And somebody asked, "Do you want this?" His response was, "I don't  
2 care. I don't care." It was something like that; right?

3 A Something like that.

4 Q Now, when you went into his house over on Eureka were you aware  
5 that Officer Godfrey and Markelus had this on-going conversation and there  
6 was actually an open investigation, if you will, into Sonya Burkholder?

7 A Yes and no.

8 Q You knew about an incident from two years ago, but as far as the  
9 extent of the relationship and the communication between Godfrey and Carter  
10 you weren't quite aware of, or, the extent of it? Is that fair?

11 A Well, from Godfrey telling me that he could get ahold of Carter I knew  
12 that, yea, and I don't know how he phrased it, like 'hey, I've been working with  
13 Carter', so I knew that he had some sort of relationship because he said that  
14 he had a fairly recent phone number. But, to the extent of what that all was,  
15 no.

16 Q Okay. So, when you saw -- in other words, at that time that you were  
17 in that house in that early morning did you realize that Godfrey had  
18 interviewed witnesses in relation to this Sonya Burkholder investigation just  
19 the week prior?

20 A Not the full extent. Just that an investigation had occurred.

21 Q So, you --

22 A I don't know what all he had done.

23 Q Right. So, you were not aware at that time that even just the week

1 prior he had interviewed witnesses in relation to that?

2 A Well, I mean, yes and no. I knew that he had done an investigation in  
3 regards to what he testified to. But, I don't know the depth of what all he had  
4 done.

5 Q Did you know that he had interviewed witnesses?

6 A No.

7 Q Okay. So, to you, seeing the e-mails on the table, you connected it --  
8 you didn't connect that to interviews that would have taken place the week  
9 before with Godfrey? That wasn't the first thing you thought?

10 A No, that's fair.

11 Q That's not the first thing you thought when you saw them?

12 A No.

13 Q Did you, yourself, interview Sonya Burkholder about the events of the  
14 morning hours of February 23rd?

15 A I spoke to her on the 25th at her house, under the impression that she  
16 had already been interviewed.

17 Q And that statement is memorialized in page eight of nine?

18 A In that summary right there; yes, sir.

19 Q And you would agree with me that it did not deal with the morning  
20 hours of that day; correct?

21 A Correct.

22 Q So, in 2014 you sent out a request to Sergeant Smith; right?

23 A I contacted the prison and asked to speak with their investigator.

1 Q So, then you spoke to --

2 A I didn't know Mr. Smith at that point.

3 Q Okay. So, ultimately then you hooked up with Sergeant Smith on that;  
4 correct?

5 A Yes.

6 Q And that would have been in early February; correct?

7 A I believe so.

8 Q Okay. Like February 8th or before?

9 A February of 2014.

10 Q Early February of 2014?

11 A Yes.

12 Q Okay. Then you received information back from him on approximately  
13 February 25th; correct?

14 A Without seeing the date, I'll take your word for it. It was in February  
15 again.

16 Q You wrote a report on it. I don't want the jury to have to take my word  
17 for it. It's important.

18 A Well, I mean, it was shortly thereafter that I received that information  
19 back.

20 Q So, on February 25th you do a report memorializing the investigation of  
21 Sergeant Smith; correct?

22 A Yes.

23 Q And the original date, report date, would have been February 23rd?

1 A That refers to the original crime.

2 Q Oh. Sorry. So, the report date that you wrote for this one was  
3 February 25th, 2014; correct?

4 A Yes, sir.

5 Q Is it fair to say that shortly around that time was when you received the  
6 report from Sergeant Smith?

7 A Yes.

8 Q And Sergeant Smith indicated to you that he initially interviewed a  
9 Thomas Smith; correct?

10 A Yes.

11 Q And at some time later -- well, you received his report; correct?

12 A Yes.

13 Q And some time later, two or three weeks later, he then interviews - I'm  
14 sorry - two weeks later or so he interviews Stephen Upham. That's the gist of  
15 what you report?

16 A Well, it's all in the same report.

17 Q I understand.

18 A He also interviewed a Bloomfield as well, I think.

19 Q Correct. But, different days; correct? Well, I guess I don't want you --

20 A I don't know that for sure.

21 Q Okay. Let me put it to you this way - when you were interviewing --  
22 you interviewed Upham on February 25th, 2014?

23 A That was after having the information --

1 Q The report. I understand.

2 A -- and then having him conveyed. You know, it's a difficult process to  
3 interview someone in prison, especially to get them brought to the Police  
4 Department. But, that's what I did. Yea.

5 Q Right. When you were speaking with him he indicated that it was just a  
6 short time earlier that he had spoken with Sergeant Smith; correct?

7 A I know he had spoken with Sergeant Smith and given him the  
8 information that Sergeant Smith passed on to me.

9 Q A time line. Didn't he tell you that it was just as recent as a couple of  
10 days, or, eight days or less or something?

11 A He may have. That, to me, at the time, I didn't think it was that  
12 important.

13 Q Yea, it wasn't important. But, once again, you didn't have the benefit  
14 of him testifying here in relation to whether that's important or not; correct?

15 A Sure.

16 MR. RION: Your Honor, may we  
17 approach?

18 THE COURT: Sure.

19 (WHEREUPON, Court and counsel had a brief discussion at the Bench, on  
20 the record, as follows.)

21 MR. RION: This would be a logical place  
22 to stop. I mean, we're going to be done Monday one way or the other; right?  
23 I'm telling you that there's --

1 THE COURT: You're still going to be  
2 awhile?

3 MR. RION: I think so. So, this would be a  
4 logical breaking point for me if that's okay with you.

5 THE COURT: Okay.

6 MR. RION: It could be a half hour or more.

7 THE COURT: (Inaudible).

8 MR. MILLER: So, you want to break for  
9 the day?

10 THE COURT: Yea. Okay. All right.

11 (WHEREUPON, Court continued on the record, as follows.)

12 THE COURT: Okay. Again, I'm trying to  
13 be understanding of the jury's time, and it's been a long day, and there's been  
14 delays, we're going to break for the evening. We'll continue with the  
15 examination of Detective Clark tomorrow. We're still in the cross examination  
16 of Detective Clark's testimony.

17 I do want to say this. I was kind of going to wait until the end, but now  
18 that we're breaking for the day I'm just going to reiterate, and it shouldn't  
19 come as anything real new to you folks and I'm not, again, trying to  
20 overemphasize anything, but there's been testimony, obviously, about two  
21 weapons found on Eureka Street. They are not the weapons that are alleged  
22 to be involved in the counts in this case. There's also been some testimony  
23 here by the Detective as to cocaine that was found during a search, or other

1 charges that were brought, or the fact that the defendant was incarcerated at  
2 different times. Again, that is not to be considered as proof of any of the  
3 counts in this case in terms of the elements that you're going to have to find  
4 whether or not the State proved beyond a reasonable doubt in this case. But,  
5 that evidence cannot be considered, all that evidence cannot be considered  
6 to prove the character of the defendant or that he acted in conformity with that  
7 character as it relates to the exact charges in this case. That evidence,  
8 however, can be used only for limited purposes, including identity, or motive,  
9 or opportunity, or preparation, or plan. As I said before, with respect to what  
10 other witnesses may have said in terms of who was talking to who, if it  
11 corroborates or it can go towards the credibility of identity evidence, well, you  
12 can use it for those limited purposes. But, again, you can't say, well, there  
13 were other charges, or the defendant was incarcerated, for example, and  
14 therefore this is proof of his character and that he acted in conformity with that  
15 in these cases. That, -- you can't use it for that. It's important that you keep  
16 that in mind. I know I've repeated that before, but since there was another  
17 witness who testified to that I thought that instruction was appropriate at this  
18 point and time.

19 So, we'll break for the evening. We'll continue with the examination of  
20 Detective Clark. Again, I'm trying to be an optimist. Nine-fifteen again? We'll  
21 return at nine-fifteen. Remember the admonitions. Don't discuss the case.  
22 Don't do any independent research. Don't pay attention to any media. If  
23 anything comes up all those admonitions that I've been giving you, well, keep

1    them in mind. If anything comes up that you feel in some way affects your  
2    ability to continue to be fair and impartial, well, make that known tomorrow  
3    morning.

4           So, the jury will be excused for the evening. Counsel, I just want a  
5    couple of things with counsel before you folks leave. So, the jurors are  
6    excused. Detective, you can step down.

7    (WHEREUPON, JURY WAS EXCUSED FOR THE DAY AT 4:29 P.M.)

8                               THE COURT: The jury has left the  
9    Courtroom. I just want counsel to let me know, if you can, to the extent you  
10   can, and I'm not necessarily going to hold you, but is this the State's last  
11   witness as far as you know right now?

12                            MRS. KOHLRIESER: Potentially.

13                            MR. MILLER: Potentially. Potentially what  
14   happens here on cross examination and all of that. But, yea.

15                            THE COURT: Okay. I understand. I'm  
16   open to some leeway. But, what I'm trying to say, -- well, Mr. Rion, you got a  
17   copy of this exhibit list?

18                            MR. RION: I did.

19                            THE COURT: I've been working off of that.  
20   There obviously have been some exhibits marked that weren't on the original  
21   list, and obviously there's defense exhibits. But, what I would like the parties  
22   to be prepared to do when the State is finished with their case-in-chief that we  
23   go, obviously, and I assume you're going to move for the admission of



1 exhibits.

2 MR. MILLER: Uh-huh

3 THE COURT: I'd like to do that, and  
4 because of the great number of exhibits we'll key in and if you can let me  
5 know the best way, or, the most efficient way would be to say 'we are moving  
6 for the admission of all of our exhibits except for --

7 MRS. KOHLRIESER: Yes.

8 THE COURT: Then we'll limit those. We'll  
9 cancel those out fast, the ones you're not moving for. Then, Mr. Rion, be  
10 prepared to object numerically. Like, for example, if the first one you're  
11 objecting to is, and I'm just using this completely as an example, is number  
12 '20', well, you can say, well, the first one you're objecting to would be number  
13 '20' and that means you're not objecting to the admission of '1' through '19'.  
14 We'll try to do it orderly. A lot of times in cases that don't have a lot of  
15 exhibits I'll go number '1', number '2', and that would take some time. So, if  
16 we could zero in on the ones that the State are not moving to be admitted,  
17 and we would assume that you're moving to admit all the others, and then Mr.  
18 Rion will be prepared to object specifically. Now, if Mr. Rion is objecting to  
19 every one, well, we'll take them one by one. But, if you're not objecting to  
20 every one let's zero in on the ones you are objecting to. I think that will make  
21 it more efficient because, again, that will be some time when the jurors are  
22 going to be waiting around and wondering what's going on.

23 MRS. KOHLRIESER: Your Honor?

1 Actually, if you want, I can just tell you real quick so Mr. Rion can think about  
2 it overnight, the ones that we're withdrawing specifically.

3 MR. RION: I think I can guess. I'm good.  
4 We don't need to waste everyone's, the whole Courtroom's time.

5 THE COURT: Okay. Yea. I don't know,  
6 you know, Detective Clark hasn't finished. So, I don't know if there's other  
7 exhibits. So, anyways.

8 Then I understand, Mr. Rion, the witnesses that you had subpoenaed  
9 that are in custody are here. Again, without --

10 MR. RION: I'll put them on first, your  
11 Honor.

12 THE COURT: Well, if you had an order  
13 because the corrections officers talked to me during a break and because of  
14 the logistics, again, and to avoid any kind of collision, well, to have them, the  
15 ones you need first ready to go, and then as one is done they'll be taking that  
16 person down. They can probably have two of those folks up here at a time.  
17 We're going to try to keep it a flow here so it's not waiting around to bring  
18 them up from booking or to bring them down from wherever they're at and  
19 crossing in the hall and all of that stuff. So, if you have a general idea who  
20 the first couple of ones would be, well, just let me know in the morning and I'll  
21 let the officers know.

22 MR. RION: I can tell you tonight. Also,  
23 Steve Savage is not going to be called and so he can be returned at any time

1 that the jail wishes to return him.

2 THE COURT: Okay. Well, that's good to  
3 know. I'll let them know. I don't know -- where's he from?

4 MR. RION: He's in booking. He's from  
5 A.C.I.

6 THE COURT: Okay. Okay. Well, yea, I'll  
7 try to remind them. Maybe, Deputy, you can make note that Steve Savage  
8 will not be called. So, I don't know if they have a car leaving tonight or  
9 tomorrow morning. But, we'll let them worry about that.

10 So, that's generally where I want to go. So, as soon as the State rests  
11 we'll talk about exhibits and take up any other matters that we need to and  
12 then the defense will have the opportunity to present witnesses.

13 MR. RION: Okay. Your Honor, I think  
14 there is some Grand Jury testimony of Tarah Carter that I believe has been  
15 transcribed and I would like to review that. I believe it's been -- it's been  
16 transcribed for a potential cross examination by the State. Given their  
17 representations that that's the purpose of its creation I would --

18 THE COURT: Okay. I'm not aware of that.  
19 I don't know if it was filed or if that is in supplemental discovery or anything  
20 like that.

21 MR. RION: I was told that they -- I don't  
22 think there's any great objection to them giving it to me, but they need a Court  
23 Order for that to happen. That's my understanding.

1 THE COURT: The State want to respond?

2 MRS. KOHLRIESER: Your Honor, I  
3 apologize. I don't have the rule in front of me. I think there has to be some  
4 kind of showing and, again, off the top of my head, I can't remember what that  
5 showing is.

6 THE COURT: Particularity or whatever it  
7 is. Yea. Particularized need. Yea.

8 MRS. KOHLRIESER: Yea. With  
9 particularity about what it is. Yes. I will represent to the Court it has been  
10 transcribed. It has not been filed. I had indicated to Mr. Rion based upon,  
11 again, not her testimony, but based upon some representations he made  
12 during opening that I did not think it entirely jived with her testimony from  
13 Grand Jury, for lack of a better term, and so that's why I had it prepared. But,  
14 it is the State's position that, number one, I think he needs to satisfy that  
15 burden of particularity first and, number two, I think it has to be ordered by the  
16 Court for me to give it and certainly I would follow the Court order on that  
17 regard, or, in that regard, excuse me.

18 THE COURT: Do you want to be heard?

19 MR. RION: I think the State just satisfied  
20 my first prong. I have representation as to its relevance in this case.

21 MRS. KOHLRIESER: Well, it's not about  
22 relevance. Relevance isn't the standard.

23 THE COURT: The need. Does he have a

1 need to have it? Yea, I mean, do you want a written order? Is an oral order  
2 on the record good enough?

3 MRS. KOHLRIESER: I think an oral order  
4 is sufficient, your Honor.

5 THE COURT: Then I am making that  
6 Order to let him see that now.

7 MRS. KOHLRIESER: Okay. All right. No  
8 problem.

9 THE COURT: Let him read it. I don't want  
10 it released to the general public or to anybody else.

11 MR. RION: It will be counsel only.

12 THE COURT: Okay.

13 MR. RION: It can be stamped or orally  
14 stated as such.

15 THE COURT: It's in the nature of Criminal  
16 Rule 16, counsel only then.

17 MRS. KOHLRIESER: Yes.

18 THE COURT: Because I don't want that  
19 turning up wherever.

20 MR. RION: It won't be shared. Counsel  
21 only rule will be followed.

22 THE COURT: Okay. You can read it.

23 Okay. All right.

1 MRS. KOHLRIESER: I actually have two  
2 things. That's why I had stood earlier.

3 THE COURT: Why is that not a surprise?  
4 Go ahead.

5 MRS. KOHLRIESER: Well, I guess I'll be  
6 happy to sit down, your Honor, and not make a record if you would rather.

7 THE COURT: No, no. Go ahead. Go  
8 ahead.

9 MRS. KOHLRIESER: As you can tell, we  
10 had an issue with State's exhibit '140-A'.

11 MR. RION: No objection.

12 THE COURT: All right. Let me get that,  
13 though. '140-A'? Okay. That's Godfrey's interview and the first one was  
14 stopped at a point you didn't want it stopped? Okay. What's your --

15 MRS. KOHLRIESER: I just wanted to say  
16 that what had happened was it had been edited to stop at fourteen thirty-eight  
17 by the computer counter and not the L.P.D. clock of two thirty-eight P.M. That  
18 has been fixed and I have a new one. I guess I'm asking, and I believe we  
19 have a stipulation here, to supplement that new one as the exhibit for the  
20 Court.

21 THE COURT: So, it will be the new '140'?

22 MRS. KOHLRIESER: '140-A' is what I  
23 made it.

1 THE COURT: Oh, okay.

2 MRS. KOHLRIESER: We wouldn't be  
3 pushing for '140'.

4 THE COURT: Okay. So, are you satisfied,  
5 Mr. Rion? Or, do you want to take a look at the new one? Has anybody  
6 looked at the new thing? You'd better look at the new thing.

7 MRS. KOHLRIESER: Yes. I did. This  
8 time I did and made sure that it does, in fact. I mean, I actually stood over the  
9 I.T. guy's shoulder while he did it.

10 THE COURT: Do you want a chance to  
11 look at that? Or, do you have anything you want to be heard on?

12 MR. RION: Before it goes back to the jury  
13 I may. But, I have no concerns about it.

14 THE COURT: Okay. If Mr. Rion is  
15 satisfied and gets a chance to look at it I'll let you substitute it. As far as  
16 going back to the jury, that's yet to be decided. But, yea, it will be the new  
17 '140-A'.

18 MRS. KOHLRIESER: Yes.

19 THE COURT: Okay.

20 MRS. KOHLRIESER: Then my second  
21 thing, your Honor, was in light of some of the questions that were asked of  
22 Stephen Upham today by the defense I guess I would just put the defense on  
23 notice that a potential rebuttal witness we would have would be Cory Smith

1 of the Department of Rehabilitation and Corrections - the records keeper.

2 THE COURT: Okay. It's on record and it  
3 shows that he's on notice. Okay?

4 MRS. KOHLRIESER: That's all I wanted  
5 to put out there.

6 THE COURT: All right. That wasn't too  
7 bad. Anything else?

8 MRS. KOHLRIESER: No.

9 THE COURT: Okay. If there's nothing  
10 else, I've got the jurors coming at nine-fifteen. I've got an eight o'clock and an  
11 eight-thirty. If you guys get here by eight-thirty, that way if there's any last  
12 minute things we can stick it on the record before the jury gets in. I would like  
13 to try and keep the case moving for the jury's benefit. Okay? So, we'll see  
14 you in the morning.

15 **(WHEREUPON, COURT RECESSED FOR THE DAY AT 4:39 P.M.)**

16

17

18 **FRIDAY, SEPTEMBER, 18, 2015**

19 **9:15 A.M.**

20

21 THE COURT: We're on the record this  
22 18th of September, 2015 in Case Number CR2014 0139, State of Ohio -vs-  
23 Markelus Q. Carter. The defendant is present with counsel. The State is



1 present. The jurors are not in the Courtroom.

2 We're about to begin the continuation of the case. Mr. Rion, you  
3 wanted to place something on the record?

4 MR. RION: Your Honor, it came to my  
5 attention last night that Mr. Carter is now charged with, I believe, Intimidation  
6 of a Witness. I'm just renewing my Motion for a Mistrial. Here's my thinking.  
7 Let's assume that he's indicted and then has a jury trial and he's acquitted of  
8 intimidating a witness. At that point I think that it would be -- I question  
9 whether or not the video and/or Upham's statement about the incident in the  
10 jail cell, or the holding cell, would be admissible. So, I'm just raising it on that  
11 basis.

12 Secondly, I just want to make a record of the events and just so the  
13 record is clear on this. It's my understanding and belief that the Court and  
14 counsel had spoken about where Mr. Upham was going to be housed and  
15 placed prior to him being put in the holding cell just so this would not happen,  
16 this event. It was my understanding that the Court stated to the prosecutor  
17 that they were to tell transport units to keep Mr. Upham in a probate closet, or  
18 cell, or some separate area of the floor to avoid this from happening. It's my  
19 understanding that there is an investigation at least that's being done to  
20 determine what did or did not happen. I'm simply asking the Court to order  
21 that that investigation and the records from that be made part of the record in  
22 this case for appellate purposes.

23 THE COURT: Does the State want to be

1 heard?

2 MRS. KOHLRIESER: Yes, I guess just  
3 briefly, your Honor. I did give Mr. Rion the reports that have been generated  
4 thus far about the incident by law enforcement here. Number one, I thought  
5 the Court and security had worked everything out in accordance with keeping  
6 people separated. I tried to be very active, Mr. Miller and myself, be very  
7 active to make sure people were separated from one another and that type of  
8 thing. I'd gone over and talked to the assistant head of the jail and all types of  
9 things to make sure everybody knew who everybody was and get things  
10 arranged. Before Sergeant Smith testified Mr. Miller had just called him and I  
11 asked permission of the Court to step out so our next witness could be  
12 arranged. I went to John Allen, who was in the security office, and said, "Hey,  
13 we need Upham in twenty minutes." My understanding, and certainly Mr.  
14 Allen is here and we can have him testify if the Court desires, my  
15 understanding is that Mr. Allen then called down to booking, or whoever they  
16 call to, I should say, I don't know, but called whoever they call to get inmates  
17 up here and said, "Hey, we'll be ready for Upham here; you need to bring him  
18 up," or something along those lines. Corrections Officer Lee Shaffer says he  
19 was told to bring Upham up for Court. He did. He placed him in the holding  
20 cell, as they normally do. Again, not realizing where, I guess, where the  
21 defendant had been being placed and things of that nature. So, Mr. Upham,  
22 and the video shows this, is placed in the cell. There are other inmates in  
23 there at the time because Judge Cheney was sentencing people and holding

1 pre-trials and things for people that were incarcerated that day and you can  
2 see on the video there's a prisoner taken back to the jail and a prisoner, well,  
3 jail inmate, I should say, who's still in there and then he's eventually taken out  
4 and that type of thing. Eventually Upham is left in the cell by himself. You  
5 can see him just kind of walking around and doing his thing. Then we broke  
6 at three o'clock and Deputy Enyart, as has been his practice when we take a  
7 morning break and an afternoon break and it's longer than just a couple of  
8 minutes, then walked the defendant to the holding cell, opened it up,  
9 unhandcuffed him and put him in there. Nobody said word one to Deputy  
10 Enyart. It's my understanding that Deputy Enyart did not realize who the  
11 inmate sitting in there was and actually believed it was one of Deputy Martin's  
12 inmates for the other Courtroom. Then he left and you saw what happened  
13 and they converged.

14       The State -- and I don't believe it was, or, the Court instructed me to  
15 make sure they put him in the probate pocket. I thought that was, I guess, a  
16 consensus of how things would be handled and that it had been conveyed to  
17 security and I had nothing to do with that, nor did Mr. Miller. I feel that's kind  
18 of been insinuated here. Maybe I'm just taking it personally. But, I did not  
19 know it was my responsibility to tell them to make sure to put him in the  
20 probate pocket because, I'll be honest, I didn't say that. I said, "We need him  
21 in twenty minutes." I thought they knew the protocol. That's the extent of my  
22 knowledge of that. Again, Lieutenant Allen, C.O. Shaffer, and, well, I guess  
23 he's not Lieutenant Allen anymore, and Deputy Enyart are here if the Court

1 wants the record clarified.

2 THE COURT: Is that all reflected in those  
3 reports?

4 MRS. KOHLRIESER: Well, the only thing I  
5 can think of is in John Allen's report, and I don't have it right in front of me  
6 immediately, he says something about that I came out there and said to him  
7 'we need Upham and place him in the holding cell'. Those were not my  
8 words. Lieutenant, I keep calling him that, I apologize, but Deputy Allen will  
9 tell you that. That's his summation based upon what he thought. Those were  
10 not my words. I simply said, "We need him in twenty minutes." That's it.

11 THE COURT: All right. Well, the Court will  
12 order, for what it's worth, any reports generated by any law enforcement  
13 regarding what occurred. Submit those. We'll make them Court exhibits for  
14 the record. Obviously I've already ruled that certain things would or would not  
15 be presented to the jury. That would include that video of the hallway scene  
16 that the State, well, that we had discussions about. Make that a Court exhibit,  
17 too, for purposes of just so it's on the record. Everything that we have that's  
18 generated, -- if there are any other reports generated as of now that you  
19 might not have had yesterday, and I don't know if there's a detective report or  
20 anything that's been involved in that, --

21 MRS. KOHLRIESER: I don't have  
22 anything beyond that.

23 THE COURT: -- get those. Anything

1 that's as of the present day, or, let's put it this way, anything that is generated  
2 that you can find before the end of this trial, well, we'll make it a Court exhibit  
3 just so that it's there in the record to explain what occurred. Okay?

4 MRS. KOHLRIESER: Just to put the Court  
5 on notice, Detective Baker is the one assigned to that and he is on, I think, a  
6 medical leave effective today.

7 THE COURT: Okay. If there's anything  
8 that exists, get it and we'll just make it a Court record so that will all be on the  
9 record, including that video in the hallway that I would not be allowed to be  
10 played to the jury.

11 As far as the Motion for Mistrial, again, the Court made the  
12 determination yesterday that I allowed this evidence in for the jury as  
13 consciousness of guilt under the case law that I cited. The Court is going to  
14 make a finding that the actions of intimidation of a witness as consciousness  
15 of guilt does not necessarily require there to be a conviction. It is the  
16 description of the actions both Mr. Upham described and the video shows.  
17 Whether the defendant is convicted of that in the long run or not the Court  
18 finds does not enter into the determination as to whether that can be  
19 presented as evidence. So, the Motion for a Mistrial is overruled.

20 The Court will also make a statement to kind of go along with what  
21 counsel already said. The Court's recollection is there was an in-chambers  
22 discussion about the logistics of having the prison witnesses in the same  
23 building as the defendant. My understanding was that they would be

1 separated. I double-checked my entries. I don't think with respect to the  
2 entry on Upham, because that was done weeks ago, I think, or at least far in  
3 advance of the trial, but certainly with respect to the other inmate witnesses  
4 my Order conveying them to the county specifies that they are to be kept  
5 separate from the defendant and that was consistent with our separation of  
6 witnesses Order. It was the Court's understanding that that would have been  
7 generally understood. In our chamber conference there was discussion about  
8 the prison inmates, specifically Mr. Upham, being kept in the probate holding  
9 room, which is separate from the regular holding room. I think it was in the  
10 nature of perhaps a mistake because Mr. Upham was dressed in stripes  
11 instead of in typical Department of Corrections garb that somehow there was  
12 a non-communication, or a miscommunication, to the booking officers who  
13 brought him up. So, it was an accident/mistake. I think I already mentioned  
14 that on the record. So, that's the Court's take on that.

15 But, again, I'm finding that the mistrial is not well taken. The Motion for  
16 a Mistrial is not well taken because the evidence was permitted as  
17 consciousness of guilt which, under the case law that I read, I don't recall in  
18 those, maybe there are some cases where a person is subsequently tried for  
19 an intimidation, but I don't think consciousness of guilt necessarily requires a  
20 determination as to whether a person -- well, it's similar to an escape or an  
21 absconding as consciousness of guilt and I don't think it necessarily is  
22 contingent upon whether a person is ultimately in a Court of law found guilty  
23 or not of the actions that demonstrate a consciousness of guilt. The actions

1 were described by the witness and were described in detail on the video.  
2 Whether the defendant is convicted of that ultimately or not I find has nothing  
3 to do with whether it's permitted. So, if that's the basis for the Motion for  
4 Mistrial, again, it's overruled. Exceptions are noted.

5 Anything else?

6 MRS. KOHLRIESER: Just briefly, your  
7 Honor. Part of the reason you said that second video couldn't be played, and  
8 also calling other witnesses and things like that, is because Mr. Rion was very  
9 adamant back in chambers that there was no question of the fact that it was  
10 an accident, or mistake, or something of that nature. So, I guess, you know, it  
11 opens the window back up if now he's going to try and act like it was the  
12 prosecutor's job to make sure he was put in the pocket and somehow we  
13 didn't fulfill that and somehow we had something to do with Mr. Carter's  
14 decisions that he made in that room that day.

15 THE COURT: When I ordered that the  
16 video in the hallway was not going to be played to the jurors I think I ruled that  
17 there would be no argument in closing arguments as to things that may or  
18 may not have occurred that aren't already on exhibit '173', which is the actual  
19 holding room video that I did allow to be played. So, I think that would take  
20 care of that. There's not going to be any argument on what else may have or  
21 may not have occurred. I will not allow any argument on the Sheriff's  
22 Department, or the Corrections Officers, or the prosecutor, or anybody else  
23 should have done something differently in the logistics of housing the

1 witness and the defendant. I thought -- well, I tried to make that clear  
2 yesterday. I'm just not going to permit that. You've made your argument with  
3 regard to the Motion for a Mistrial. It's overruled. Anything else?

4 MRS. KOHLRIESER: No, your Honor.

5 MR. RION: No, your Honor.

6 THE COURT: All right. Let's get the jurors  
7 in. We have Shelly Osting now as a substitute. Detective?

8 (WHEREUPON, jury was brought into the Courtroom at 9:29 A.M.)

9 THE COURT: Okay. The record should  
10 reflect then the jurors have been returned to the Courtroom for Friday,  
11 September the 18th, 2015. Welcome back, ladies and gentlemen of the jury.

12 I want to introduce Shelly Osting. Shelly is now our substitute bailiff.  
13 Susan Thomas, my Court Reporter, had previously scheduled some time off  
14 for today. Monica, who is a jack of all trades, knows how to operate the  
15 recording information and so she moves over to that seat. Shelly, you may  
16 have seen as our receptionist, does a myriad of different duties and she  
17 knows how to be a bailiff and so she's substituting. So, we've got new  
18 personnel and so I just wanted to explain that and welcome Shelly.

19 We're doing better. I didn't have you waiting two hours this morning.  
20 So, we'll get started right away. Detective Clark is on the stand. We were in  
21 the middle of cross examination when we broke. So, Mr. Rion, you may  
22 continue.

23 MR. RION: Thank you, your Honor.



1 **CROSS EXAMINATION OF DETECTIVE TIMOTHY CLARK CONTINUED**

2 **BY MR. RION:**

3 Q Good morning, sir.

4 A Good morning.

5 Q I just have a few more questions for you. Let's start with -- well, there  
6 were two shell casings that were found at the scene on the cement pad; do  
7 you recall?

8 A Yes.

9 Q And those two shell casings, if you recall from testimony in Defense  
10 exhibit 'M', appear to be not logged in for a five or six month period - from  
11 May until October; do you recall that?

12 A I do.

13 Q Okay. And do you recall that one of the officers said, well, it was  
14 checked out by you; correct?

15 A That's what he said, I think.

16 Q And that if I wanted to know where that was that I would have to speak  
17 to you about it? That's essentially what he said.

18 A Yes, I remember that.

19 Q So, I'm speaking to you about it.

20 A Very good.

21 Q So, the two shell casings that were found, well, you did check them  
22 out; didn't you?

23 A Well, yes, so to speak.

1 Q And you sent them off for some additional testing?

2 A They were sent to London, England, to Scotland, well, I don't know if it  
3 was Scotland Yard, but something along those lines in London, England.

4 Q The Northamptonshire Police Department in England; correct?

5 A Yes.

6 Q And they did some testing that came up of no value to you; correct?

7 A Correct.

8 Q And they sent those casings back to you on June 29th, 2010; correct?

9 A They were Fed. Ex'd back to the Police Department, I think.

10 Q And you would agree that June 29th was when they were Fed. Ex'd.  
11 back to you?

12 A I don't --

13 Q If you need to refresh your recollection I'm happy to show you --

14 A Well, yea, I don't specifically remember the exact dates, but I don't  
15 have any reason to dispute the record.

16 MR. RION: If I could just show him this so  
17 there's no question?

18 THE COURT: Sure.

19 Q Does it appear to you that on June 29th that you were informed by the  
20 Northamptonshire Police Department that they were Fed. Ex'ing those  
21 casings back to you?

22 A Yea. That's the date of the e-mail that indicated that they had checked  
23 them and weren't able to do anything with them.

1 Q And that they were going to Fed. Ex. them back to you?

2 A Yes. Uh-huh.

3 Q So, if that's in June of 2010 do you have an explanation as to why it is  
4 they're not put into the property room until October?

5 A No. I don't handle property.

6 Q There was testimony yesterday about a MySpace account. Do you  
7 recall that?

8 A I do.

9 Q A couple of things on that. First of all, you said that on Markelus  
10 Carter's MySpace account that he had, well, I guess at that point there's sort  
11 of a space where you can put your mood for the day, I guess, or for a time  
12 period; correct?

13 A Not being a user of MySpace, that's an assumption I made.

14 Q Okay. And the mood said determined; right?

15 A Yes, it did.

16 Q Do you know how long that mood had been his posting?

17 A I took it as --

18 Q Sir, do you know how long the word 'determined' had been next to the  
19 word 'mood' for his mood? Do you know how long it had been there?

20 A No.

21 Q Could it have been days?

22 A Well, there was a date attached.

23 Q The date attached was the last time that the computer was logged in;

1 correct?

2 A That's correct.

3 Q Well, let me finish this before I go to something else. The mood stated  
4 as determined could have been just what he put there when he opened up  
5 the account and it had never been changed; correct?

6 A I suppose.

7 Q Did you check with MySpace to see how long that listing had been  
8 there?

9 A No.

10 Q Now, referring to Defense (sic) exhibit '115-A', you had officers in  
11 Markelus' house on that day; correct?

12 A On the 23rd?

13 Q Yea, on February 23rd.

14 A Yes.

15 Q And this picture accurately reflects that; correct?

16 A Accurately reflects what?

17 Q Markelus' house on February 23rd.

18 A Oh. Yea, that appears to be a picture of the studio.

19 Q Yes. This was taken on --

20 A On the 23rd; yes, sir.

21 Q -- February 23rd while you guys were searching; correct?

22 A Yes.

23 Q And, as you can see, while you are searching the computer screens

1 are essentially all active; right?

2 A Well, it appears that there are two that are on in some fashion.

3 Q Possibly three; correct?

4 A Uh, --

5 Q That one, and --

6 A Well, I would definitely agree with those two there. I'm not sure what's  
7 going on down at that end.

8 Q It's a picture and so --

9 A May I see it?

10 Q It doesn't really matter whether it's two or three. But, it appears as if  
11 the computers are being accessed by either an officer, or they're just on, or  
12 whatever?

13 A Well, I don't know that you can say they're being accessed by officers.

14 Q They were turned on by officers?

15 A I don't -- I don't know that to be the case, either.

16 Q I think we had testimony from Officer DeLong that he had to properly  
17 shut them down.

18 A Oh, that may be. Okay.

19 Q So, in 2009 you sent a series of things for testing; right?

20 A Yes.

21 Q You sent Markelus' shoes?

22 A I know we sent a lot of things to B.C.I. early on.

23 Q Okay. A lot of different sets of clothing and things at that point that

1 you thought were relevant; right?

2 A An assortment of items; yes.

3 Q Okay. And they were testing for blood?

4 A Yes.

5 Q Testing for DNA?

6 A Yes.

7 Q Actually what items did you test for fingerprints?

8 A I don't know that we send a lot of stuff to B.C.I. for fingerprinting.

9 That's something that I think our guys do generally at the L.P.D.

10 Q B.C.I. Agent Bartholimew tested seven prints, did she not, that were  
11 lifted from somewhere?

12 A I'm not sure. I think there might have been some prints lifted from his  
13 vehicle, or, from a vehicle. Maybe from Carter's, or, from Mr. Warrington's  
14 vehicle. I'm not recalling that.

15 Q But, do you have your notes here to refresh your recollection?

16 A I do not have my notes here.

17 Q So, nothing that -- well, prints were taken from an assortment of things;  
18 correct?

19 A Well, I vaguely remember prints taken from a car. I don't remember if  
20 it was Mr. Warrington's or Mr. Carter's. But, I don't recall that anything came  
21 back as useful.

22 Q Well, there were -- well, which officer would have been responsible for  
23 the lifting of prints?

1 A That could have been Detective Marik, or Detective Whitney, or B.C.I.  
2 Agent Hammond.

3 Q Okay. But, you're not aware as the case agent as to whether or not  
4 prints were lifted and where they were lifted from? You have no way of  
5 determining?

6 A Case agent?

7 Q It is true that there were some unidentified prints that did come back;  
8 correct? In other words, there were prints lifted from some surface that you  
9 believed to be relevant that came back from an unidentified person?

10 A Well, as the case agent I didn't do any fingerprint lifting and I never  
11 received any information of any relevant prints coming back.

12 Q Okay. If prints were lifted from a relevant object and came back to an  
13 unidentified third party could that be potentially relevant?

14 A Well, obviously it would.

15 Q Okay. Yesterday we spoke briefly about a gentleman by the name of  
16 David Evans; correct?

17 A Yes.

18 Q David Evans name came up in the context of whether or not  
19 information travels, or, potentially can travel through various ways in the  
20 community to get into prison. But, it was on the subject of how information  
21 travels and whether it can travel; correct?

22 A That was a theory that you were floating at that time.

23 Q Well, no, you would agree with me that information travels and people

1 gossip by nature; correct?

2 A I can't argue with that.

3 Q Okay. And David Evans told you that he had been in A.C.I. around

4 2011; correct?

5 A Yes.

6 Q And he was just there as a transfer, for a short amount of time;

7 correct?

8 A It's my understanding --

9 Q Well, he was just there as a transfer for a short amount of time;

10 correct?

11 A Thirty days.

12 Q Yea. Right. And at that time, though he remembered it to be 2011, it

13 could have been late 2010 as well; correct?

14 A I think it was, actually, in that time frame.

15 Q And so David Evans, from the information that you had by looking

16 maybe at logs, Evans said it was in 2011, but the logs from the prison may

17 indicate that it was late 2010; correct?

18 A I spoke with David Evans and he said that he was there for a short

19 period of time in 2011, but I believe the logs indicate that that was not the

20 case and it was actually 2010.

21 Q Right. Same theory applies though. Information and people, by

22 nature, gossip; fair enough?

23 A People do gossip. I don't.



1 Q Everyone on the planet except for you?

2 A Pretty much.

3 Q Officer, that's all the questions I have. Thank you.

4 A Thank you.

5 THE COURT: Okay. Any redirect?

6 MR. MILLER: Yes, your Honor. Thank

7 you.

8 **REDIRECT EXAMINATION**

9 **BY MR. MILLER:**

10 Q Okay. Morning.

11 A Morning.

12 Q Back to yesterday. I want to take you back to yesterday when your  
13 cross examination began. I believe Mr. Rion asked if any other houses were  
14 searched in this particular case. I may be paraphrasing it. I'm not using the  
15 exact question. But, I believe he asked you if any other houses were  
16 searched in this case other than Mr. Carter's house. I believe your response  
17 was that 'there was not'. Do you recall that testimony?

18 A Right. Yes. I did briefly, and I don't know if I would describe it as a  
19 search, but I did briefly walk through Miss Burkholder's home that morning  
20 and casually look around. But, no, no other search warrants of anyone else's  
21 homes. No other searches were conducted.

22 Q Okay. A formal search where a search warrant was obtained?

23 A A formal search would be a good way to describe that; yea.

1 Q What do you need to have -- what do you need as a police officer to  
2 search formally for evidence?

3 A Well, as I said yesterday, to get a search warrant you have to have  
4 probable cause and you have to be able to provide a Judge with enough  
5 information for him to grant the search warrant. But, Mr. Rion said, you know,  
6 'did you also ask for anyone's permission'. I did not do that, either.

7 Q Okay. Did you ever have even probable cause to search anyone  
8 else's home as a suspect in this particular case other than Mr. Carter?

9 A No.

10 Q Now, also, right after that, I believe, Mr. Rion handed you what was  
11 marked as Defense exhibit 'JJ'. I'm not going to dig through the pile unless  
12 it's necessary to get that out. I'll just describe what that was. That was a  
13 letter saying to investigate Faye Warrington.

14 A Yes.

15 Q Do you recall that from yesterday?

16 A Yes.

17 Q Just to refresh things from yesterday.

18 A Uh-huh.

19 Q When you received that did you have an idea of who might have sent  
20 that letter?

21 A No. It was anonymous.

22 Q Just an anonymous letter?

23 A I got anonymous phone calls, too.

1 Q Okay. Did you, at any point, have any reason to suspect Faye  
2 Warrington of this crime?

3 A Not at all.

4 Q You were also, and I think this was yesterday as well, well, it was  
5 because it wasn't today, I believe Mr. Rion handed you a report and, again,  
6 asking you about the words in there about Ken moving in with Sonya and a  
7 report saying that Sonya loved Ken. Do you remember that testimony from  
8 yesterday?

9 A Yea. Sure. Uh-huh.

10 Q Any reports that you generate during the course of an investigation,  
11 are those word for word what people tell you when you're talking to them? In  
12 other words, does your report reflect their very language?

13 A No.

14 Q What are they? What are your reports?

15 A My reports are generally a summary of my activities. That's just how I  
16 have always done it. Other people do it differently. Other people have their  
17 reports transcribed word for word. You know, they record their reports on a  
18 tape and send it in and have the whole thing transcribed. I've always just  
19 used the summary method. The thing about that with Sonya and Mr.  
20 Warrington, I really didn't put a lot into whether he lived there full-time, or  
21 whether he lived there part-time, or whether he lived there at all. The only  
22 thing that seemed relevant to me was that he was there that morning and he  
23 was allowed to be there and that he was there that morning and he was

1 murdered. I really didn't get caught up in if he lived there full-time or not. He  
2 was there that morning and he was allowed to be there.

3 Q Okay. Okay. Just to close out this particular subject, your reports are  
4 summations and they're not quotes from the person, necessarily quotes from  
5 the person that you're interviewing at the time?

6 A That's correct.

7 Q Okay. So, the words, or the phrase, moved in, or, you know, she loved  
8 Ken, were those necessarily Sonya's words?

9 A That's the way I took it at the time I wrote the report.

10 Q Now, you were asked yesterday by Mr. Rion whether you were aware  
11 that Sonya had other relationships, or, had relationships with other men other  
12 than Ken Warrington.

13 A Yes.

14 Q Were you aware that she did, in fact, have relationships with other  
15 men?

16 A I was aware of one other relationship that both sides confirmed, and I  
17 was aware of another relationship that both sides didn't confirm. In other  
18 words, there was a bit of a dispute as to what kind of a relationship it actually  
19 was.

20 Q Okay. Let's just narrow it down. Agruello Harris, because that's the  
21 name that came up yesterday, do you recall Agruello Harris coming up in this  
22 investigation?

23 A Yes.

1 Q Okay. Did you check into Agruello Harris as a possible suspect?

2 A Yea. Well, I interviewed him briefly and he was home that night with  
3 his wife and newborn.

4 Q Okay. You were asked about the proofs, the Allstate Insurance card  
5 proofs, in the car, in Mr. Carter's car that you impounded the day he was  
6 interviewed, or, taken to the Police Station.

7 A Yes.

8 Q Did you have an opportunity to talk to Mr. Bennett about those proofs  
9 at any point during your investigation?

10 A Yes.

11 Q Did he tell you anything about Mr. Carter bringing those proofs to him  
12 that morning?

13 MR. RION: Your Honor, objection.  
14 Hearsay.

15 MR. MILLER: I'll try to rephrase the  
16 question and get around the hearsay.

17 Q Did you speak to Mr. Bennett about those proofs and Mr. Carter telling  
18 investigators that he was on his way to Mr. Bennett's house?

19 A I did speak with Mr. Bennett.

20 Q Okay. After speaking with Mr. Bennett did you draw a conclusion as to  
21 whether --

22 MR. RION: Objection, your Honor. They  
23 can call Mr. Bennett as a witness if they want.

1 MR. MILLER: It's in the course of the  
2 investigation.

3 THE COURT: Well, I'll overrule the  
4 objection the way the question was phrased.

5 Q I've got to phrase it that way again.

6 A Start over, please.

7 Q After speaking with Mr. Bennett did you draw a conclusion as to  
8 whether or not Mr. Carter was actually going to deliver those proofs?

9 MR. RION: Objection.

10 THE COURT: Overruled.

11 A Mr. Bennett indicated that he wasn't expecting that visit and that Mr.  
12 Carter had been working on those things for such a long time that he had kind  
13 of forgotten about it.

14 Q Yesterday you were asked about a silver and black handgun that came  
15 up during the course of this investigation.

16 A Yes.

17 Q Do you recall actually that "silver and black handgun" coming up during  
18 the course of your investigation?

19 A I believe the --

20 Q Well, do you recall it coming up?

21 A Yes.

22 Q Where did you get that information?

23 A Markie Carter. That's his son. I don't know if that was clarified or not.

1 Q Yes. Okay. Did investigators speak to Markie Carter about where  
2 Markie Carter had seen that black and silver handgun?

3 MR. RION: Objection, your Honor.

4 THE COURT: Overruled.

5 A Yes.

6 Q Did you talk to those investigators about their conversation with Markie  
7 Carter?

8 A Yes.

9 Q Did you then draw a conclusion as to where that silver and black  
10 handgun, or, whether or not there was, in fact, a silver and black handgun at  
11 122 East Eureka?

12 A Yes.

13 Q And what was your conclusion?

14 MR RION: Objection.

15 THE COURT: Overruled.

16 A That there was another handgun in the home aside from the two that  
17 we recovered that had been kept on the shelf near where the Winchester nine  
18 millimeter rounds were found.

19 Q Did you ever find that silver and black handgun?

20 A No.

21 Q Yesterday Mr. Rion asked you if you recalled telling Mr. Upham that  
22 Mr. Warrington was shot and I think the term was 'five times in the back'. Do  
23 you recall that testimony from yesterday?

1 A Yes.

2 Q Did you, in fact, say that to Mr. Upham?

3 A I may have.

4 Q Did you say that to him before or after he gave you the information that  
5 he testified about in this trial?

6 A Any conversations about details would have been after his initial story  
7 to me. It wouldn't make any sense, again, like we spoke before, to give him  
8 details before he told me and then expect those details to be useful.

9 Q During the course of your investigation did you find anything that would  
10 cause you to doubt the integrity of Mr. Upham's statement to you?

11 A No.

12 MR. RION: Objection.

13 THE COURT: Overruled.

14 A No. In fact, --

15 MR. RION: Objection.

16 THE COURT: I already overruled the  
17 objection. There wasn't another question.

18 MR. MILLER: There wasn't another  
19 question.

20 A I was going to continue on with my answer.

21 THE COURT: Well, wait until there's a  
22 question.

23 A Okay. I'm sorry.



1 Q I think there was a question yesterday, and I apologize if I'm not  
2 recollecting correctly, but I think there was a question yesterday about Sonya  
3 having a C.C.W. Do you recall a question from Mr. Rion about that topic?

4 A I think so.

5 Q Okay. Did you find any information during the course of your  
6 investigation that would indicate that Sonya killed Ken Warrington?

7 A No. Lots of people have C.C.W.'s.

8 MR. MILLER: One second, your Honor.

9 THE COURT: Okay.

10 (WHEREUPON, Court went off the record briefly.)

11 Q Carlotta Williams. Did you tell Carlotta Williams during the course of  
12 your investigation about, well, anything about paintball masks?

13 A No. I didn't know about a paintball mask until Stephen Upham  
14 mentioned it.

15 Q And was that after you spoke with Carlotta?

16 A Yes.

17 Q Did you ever tell Carlotta about, anything about Mr. Carter potentially  
18 stalking Mr. Warrington?

19 A I don't believe so. I believe that stalking and paintball masks are the  
20 two things that Mr. Upham told me, despite everything else, that make his --

21 MR. RION: Objection.

22 THE COURT: Sustained.

23 Q Other than with your fellow law enforcement officers who were taking

1 part in the investigation did you ever share the pictures that have been shown  
2 in this trial from Mr. Carter's camera, for example, the picture taken at night of  
3 Ken's truck behind, just to refresh, Sonya's house? Do you know what  
4 pictures I'm talking about?

5 A Yes.

6 Q Did you ever show anyone those pictures other than law enforcement  
7 during the course of your investigation?

8 A Yea, but not outside of prosecutors and detectives.

9 Q Okay.

10 A Or upstairs personnel in our office.

11 Q Okay.

12 MR. MILLER: One second.

13 THE COURT: Okay.

14 (WHEREUPON, Court went off the record briefly.)

15 MR. MILLER: I have no further questions.

16 THE COURT: Okay. Any recross?

17 **RECROSS EXAMINATION**

18 **BY MR. RION:**

19 Q Your reports accurately reflect the essence of the conversations that  
20 you had with witnesses; correct?

21 A I believe so.

22 Q They're not meant to not accurately reflect the information; correct?

23 A Correct.

1 Q So, when she says that she had been seeing him for about a year,  
2 that's an accurate statement from that conversation; correct?

3 A Probably.

4 Q And she stated that he had moved in in November and that's an  
5 accurate statement or reflection of your conversation with her; correct?

6 A At that time, for sure. Yes.

7 Q Did she ever tell you on that date that Ken Warrington had returned a  
8 key to Miss Burkholder?

9 A I think there was some discussion that he had to pick up a key the  
10 night before or something having left it in the house or something.

11 Q Uh-huh. That he no longer had access to it. Did she tell you at that  
12 time that he was coming to pick up his uniforms to take them back to Mrs.  
13 Warrington's house?

14 A I don't recall that.

15 Q You interviewed Eric Bennett; correct?

16 A I spoke with Eric Bennett on several occasions and interviewed him --  
17 well, I guess interviewed him, technically, late in the investigation.

18 Q And Eric Bennett told you he had received a call around eight A.M. that  
19 morning from Mr. Carter; correct?

20 A If that's what my report says. I'd have to see it. Okay. Yes.

21 Q The call was in reference that business cards were completed;  
22 correct?

23 A I don't know if they were completed. That may be what I wrote. But,

1 Mr. Bennett later went on to say --

2 Q Sorry. Sorry.

3 A -- that he wasn't expecting it.

4 Q Sorry. Sorry. Just answer my questions.

5 A All right.

6 Q He received a call around eight A.M.; correct?

7 A Yep. Yes.

8 Q Business cards were finished?

9 A That's what I wrote.

10 Q That Mr. Carter was to bring them to him?

11 A Yes.

12 Q When did you first receive information that Sonya Burkholder was

13 highly intoxicated the late evening hours/early morning hours of February

14 22nd and into February 23rd?

15 A Never - until this all started.

16 Q What do you mean until this all started?

17 A This trial.

18 Q Really? So, you weren't present during Grand Jury?

19 A Was I in Grand Jury when this took place?

20 MR. MILLER: Your Honor, I'm going to

21 object.

22 MRS. KOHLRIESER: Your Honor?

23 MR. RION: Let me put it another way. I'll

1 withdraw the question.

2 MRS. KOHLRIESER: He's not allowed to  
3 be present when other witnesses are testifying at Grand Jury.

4 MR. RION: I'll withdraw the question.

5 THE COURT: All right. He withdrew the  
6 question. I understand where you're going. Mr. Rion understands what your  
7 objection was and he's rephrasing.

8 Q Did you ever interview Tarah Carter?

9 A She wouldn't allow it.

10 Q Just 'yes' or 'no'.

11 A No.

12 Q Are you aware of the information that she has given, a sworn testimony  
13 that she's given?

14 A Yes.

15 Q And you've reviewed it?

16 A The Grand Jury statement?

17 Q Have you reviewed any sworn testimony she's given?

18 A I wouldn't say I've reviewed it. I've been told about it.

19 Q It's your testimony that it wasn't until this trial began was the first time  
20 that you, as the lead detective, became aware that there was information out  
21 there that Sonya Burkholder was highly intoxicated in the late evening  
22 hours/early morning hours of February 23rd, 2009; is that correct?

23 A It's not credible information.

1 Q Sorry, sir. If you could answer my question?

2 A Is that correct?

3 Q That you had no, prior to the beginning of this trial, that you had no  
4 information whatsoever, and it was news to you, --

5 A Well, I think you're phrasing it in a way that's not true. But, yes, I  
6 guess, to answer your question.

7 Q Okay. I'm not trying to get personal with you.

8 A Well, you kind of are.

9 Q I'm asking you a simple question. Did you --

10 A Did Tarah Carter say that in Grand Jury? I believe she did.

11 Q Okay. So, you knew --

12 A Is that something that I considered before this trial? No, because I  
13 don't consider her credible.

14 Q Okay.

15 A I think that fairly sums it up.

16 Q But you, yourself -- you, yourself, never -- you don't consider her  
17 credible, but she was placed in Grand Jury?

18 A I'm pretty sure that --

19 Q Actually I withdraw the question. Let me put it to you like this - did you  
20 ever interview Tarah within the first two days, within the first forty-eight hours?

21 A She was interviewed that morning - not by me. She would not allow  
22 herself to be interviewed at any time after that.

23 Q On February -- the first forty-eight hours seem to be important to you;

1 correct?

2 A It is important.

3 Q Do you know which questions were asked of her at that time?

4 A I don't know. She was interviewed by, I believe, Detective Kleman.

5 MR. RION: Nothing further.

6 THE COURT: Okay. You may step down,  
7 Detective.

8 A Thank you.

9 THE COURT: Any other witnesses for the  
10 State of Ohio?

11 MRS. KOHLRIESER: Your Honor, can we  
12 have a break, please?

13 THE COURT: Okay. During the break let  
14 me know if you have any other witnesses. Okay? We're going to take a  
15 break. I'd like to say that it's going to be about fifteen minutes or so. It might  
16 be a little longer. I'll let the bailiff know if we're going a little longer.

17 Remember the admonitions. Don't discuss the case among  
18 yourselves or with anyone else. Don't formulate or reach any conclusions.  
19 Don't have any contact with the parties. We'll stand in recess for fifteen  
20 minutes or so. Okay?

21 (WHEREUPON, COURT WAS IN RECESS.)

22

23 (WHEREUPON, VOLUME EIGHT CONCLUDED.)